FEDERAL MARITIME COMMISSION

Docket Nos. 16-01, 16-07, 16-10 and 16-11

IN RE VEHICLE CARRIER SERVICES

RESPONDENTS' APPENDIX IN SUPPORT OF THEIR CONSOLIDATED MOTION TO DISMISS

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: Vehicle Carrier Services Antitrust Litigation	Master Docket No.: 13-cv-3306 (MDL No. 2471)
_____	CONSOLIDATED AMENDED CLASS ACTION COMPLAINT JURY TRIAL DEMANDED
This Document Relates to *All Direct Purchaser Actions*	

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Plaintiffs Cargo Agents, Inc., International Transport Management, Corp., and Manaco International Forwarders, Inc., by their undersigned attorneys, individually and on behalf of all others similarly situated, bring this action under the federal antitrust laws to recover treble damages and the costs of suit, including reasonable attorneys' fees, for their injuries and those of the members of the proposed Class (as defined below) resulting from Defendants' violations of the federal antitrust laws.

NATURE OF THE ACTION

1. Defendants are the largest providers of deep sea vehicle transport services ("Vehicle Carrier Services," described more fully below) in the world, including for shipments to and from the United States. Since at least 2000, Defendants have conspired to allocate customers and markets, to rig bids, to restrict supply, and otherwise to raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States. Defendants' agreement, combination, or conspiracy unreasonably restrained trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Defendants' conspiracy and agreements caused Plaintiffs and others who directly purchased Vehicle Carrier Services from Defendants to pay artificially inflated prices.

2. Competition authorities in the United States, Canada, Japan, and the European Union ("EU") have been actively investigating anticompetitive practices with respect to Vehicle Carrier Services. Additionally, on or about February 27, 2014, Defendant CSAV (defined below) pleaded guilty to a criminal Information filed by the United States Department of Justice ("DOJ") for conspiring to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for international Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. Plaintiffs bring this lawsuit on behalf of themselves and all other persons or entities who purchased Vehicle Carrier Services directly from one or more Defendants for shipments to and from the United States between January 1, 2000 and December 31, 2012 (the "Class Period") to recover damages sustained as a result of Defendants' unlawful conduct.

JURISDICTION AND VENUE

4. Plaintiffs bring this action against Defendants under Section 4 of the Clayton Act, 15 U.S.C. § 15, to recover treble damages and costs of suit, including reasonable attorneys' fees, for the injuries that Plaintiffs and the other members of the Class (as defined below) have suffered as a result of Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 15 and 28 U.S.C. §§ 1331 and 1337.

6. This Court has personal jurisdiction over each Defendant because each Defendant: (a) transacted business within the United States, including in this District; (b) directly sold Vehicle Carrier Services within the United States, including in this District; (c) had substantial aggregate contacts with the United States as a whole, including in this District; and (d) was engaged in an illegal conspiracy directed at, and which had a direct, substantial, reasonably foreseeable, and intended effect of, causing injury to the business or property of persons and entities residing in, located in, or doing business within the United States, including in this District. Defendants conduct business within the United States, including in this District, and they have purposefully availed themselves of the laws of the United States.

7. Alternatively, there is jurisdiction over foreign Defendants pursuant to Federal Rule of Civil Procedure 4(k)(2).

8. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C § 1391(b), (c) and (d) because during the Class Period, Defendants resided, transacted business, were found, or had agents in this District; a substantial part of the events or omissions giving rise to these claims occurred in this District; or a substantial portion of the affected interstate trade and commerce discussed in this Consolidated Amended Complaint ("Complaint") was carried out in this District.

UNITED STATES TRADE AND COMMERCE

9. During the Class Period, Defendants sold substantial quantities of Vehicle Carrier Services for shipments to and from the United States.

10. The activities of Defendants in connection with the sale of Vehicle Carrier Services and the conduct of Defendants and their co-conspirators as alleged in this Complaint: (a) constituted United States interstate trade or commerce; (b) constituted United States import trade or import commerce; or (c) were within the flow of and had a direct, substantial, and reasonably foreseeable effect on United States domestic trade or commerce or United States import trade or commerce. Given the volume of affected commerce, such effects were direct and substantial. In addition, it was reasonably foreseeable that Defendants' wrongful conduct, as alleged in this Complaint, would raise and artificially inflate prices for Vehicle Carrier Services for shipments to and from the United States, and would have a substantial effect on United States domestic trade or commerce or United States import trade or commerce.

11. Such effects, including the artificially raised and inflated prices that Plaintiffs and members of the proposed Class paid for Vehicle Carrier Services during the Class Period, caused antitrust injury to Plaintiffs and members of the proposed Class and give rise to their claims under Section 1 of the Sherman Act, 15 U.S.C. § 1.

12. The activities of the Defendants and their co-conspirators were within the flow of, were intended to, and did have, a substantial effect on United States commerce. The Defendants' Vehicle Carrier Services are sold in the flow of United States commerce.

PARTIES

Plaintiffs

13. Plaintiff Cargo Agents, Inc., ("Cargo Agents") is a Wyoming corporation with its principal place of business in Flushing, New York. Cargo Agents directly purchased Vehicle Carrier Services from one or more Defendants during the Class Period and was directly injured as a result.

14. Plaintiff International Transport Management Corp. ("ITM") is a New Jersey corporation with its principal place of business in Whitehouse Station, New Jersey. ITM directly purchased Vehicle Carrier Services from one or more Defendants during the Class Period and was directly injured as a result.

15. Plaintiff Manaco International Forwarders, Inc., ("Manaco") is a Florida corporation with its principal place of business in Ft. Lauderdale, Florida. Manaco directly purchased Vehicle Carrier Services from one or more Defendants during the Class Period and was directly injured as a result.

Defendants

16. Defendant Nippon Yusen Kabushiki Kaisha ("NYK Japan") is a Japanese company with its principal place of business in Tokyo, Japan. Defendant NYK Line (North America) Inc. ("NYK America") is a wholly-owned subsidiary of NYK Japan with its principal place of business in Secaucus, New Jersey. During the Class Period, NYK Japan and NYK America (collectively, "NYK Line"), directly or through their wholly-owned and controlled

subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

17. Defendant Mitsui O.S.K. Lines, Ltd., ("MOL Japan") is a Japanese company with its principal place of business in Tokyo, Japan. Defendant Mitsui O.S.K. Bulk Shipping (USA), Inc., ("MOBUSA") is a subsidiary of MOL Japan with its principal place of business in Jersey City, New Jersey. Defendant World Logistic Service (U.S.A.) Inc. ("WLS") is a subsidiary of MOL Japan with its principal place of business in Long Beach, California. Defendant Nissan Motor Car Carrier Co., Ltd., ("NMCC") is a Japanese company with its principal place of business in Tokyo, Japan. Since 2009, NMCC has been owned 70% by MOL Japan, 20% by HAL (defined below), and 10% by Nissan Motor Co., Ltd. ("Nissan"). From 1998 to 2009, NMCC was owned 40% by MOL Japan and 60% by Nissan. During the Class Period, MOL Japan, MOBUSA, WLS, and NMCC (collectively, "MOL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

18. Defendant Kawasaki Kisen Kaisha, Ltd., ("'K' Line Japan") is a Japanese company with its principal place of business in Tokyo, Japan. Defendant "K" Line America, Inc., ("'K' Line America") is a wholly-owned subsidiary of "K" Line Japan with its principal place of business in Richmond, Virginia. During the Class Period, "K" Line Japan and "K" Line America (collectively, "'K' Line"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

19. Defendant EUKOR Car Carriers Inc. ("EUKOR") is a South Korean company with its principal place of business in Seoul, South Korea. EUKOR is a joint venture: Wilh.

Wilhelmsen ASA owns 40%, Wallenius Lines AB owns 40%, and Hyundai Motor Company and Kia Motors Corporation own 20%. During the Class Period, EUKOR, directly or through its wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

20. Defendant Wallenius Wilhelmsen Logistics AS ("WWL Norway") is a Norwegian company with its principal place of business in Lysaker, Norway. Defendant Wallenius Wilhelmsen Logistics Americas LLC ("WWL America") is a wholly-owned subsidiary of WWL Norway with its principal place of business in Woodcliff Lake, New Jersey. During the Class Period, WWL Norway and WWL America (collectively, "WWL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

21. Defendant Compañia Sud Americana de Vapores S.A. ("CSAV Chile") is a Chilean company with its principal place of business in Valparaiso, Chile. Defendant CSAV Agency North America, LLC ("CSAV Agency") is a wholly-owned subsidiary of CSAV Chile, with its principal place of business located in Iselin, New Jersey. During the Class Period, CSAV Chile and CSAV Agency (collectively, "CSAV"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

22. Defendant Höegh Autoliners Holdings AS ("HAL Holdings") is a Norwegian company with its principal place of business in Oslo, Norway. Defendant Höegh Autoliners AS ("HAL AS") is a wholly-owned subsidiary of HAL Holdings with its principal place of business in Oslo, Norway. Defendant AUTOTRANS AS ("AUTOTRANS") is a wholly-owned subsidiary of HAL Holdings with its principal place of business in Gennevilliers, France.

Defendant Höegh Autoliners, Inc. ("HAL Inc.") is a wholly-owned subsidiary of HAL Holdings with its principal place of business in Jacksonville, Florida. Defendant Alliance Navigation LLC ("Alliance") is a wholly-owned affiliate of HAL Inc. with its principal place of business in Jacksonville, Florida. During the Class Period, HAL Holdings, HAL AS, AUTOTRANS, HAL Inc., and Alliance (collectively, "HAL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

Agents and Co-Conspirators

23. Various other individuals, firms, and corporations, not named as defendants in this Complaint, may have participated as co-conspirators with Defendants and performed acts and made statements in furtherance of the conspiracy. Plaintiffs reserve the right to name some or all of these individuals, firms, and corporations as defendants.

24. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while actively engaged in the management, direction, control, or transaction of the corporation's or limited liability entity's business or affairs.

BACKGROUND ON VEHICLE CARRIER SERVICES

25. Vehicle Carrier Services involve transporting any type of wheeled freight on large, ocean-shipping vessels on deep-sea routes. The freight shipped includes all types of vehicles, including cars, trucks, construction vehicles, tracked vehicles and machines (such as excavators or bulldozers), tractors, trailers, capital equipment vehicles used in construction, agriculture, and mining, and other types of wheeled freight.

26. Vehicle Carrier Services involve the use of specialized vessels equipped with ramps such that wheeled freight can be rolled on or rolled off of the vessels. The term "RoRo" is often used to refer to these vessels ("RoRo Vessels") or to the transport of vehicles on such vessels ("RoRo Shipping").

27. There are two types of RoRo vessels: Pure Car Carriers ("PCCs") and Pure Car and Truck Carriers ("PCTCs"). PCCs were designed exclusively for the movement of passenger cars (and possibly small trucks). They can be thought of as movable parking garages with up to 10 to 12 levels (or decks). PCTCs were designed to carry cars and trucks. The main distinguishing feature between PCTCs and PCCs is that PCTCs are equipped with hydraulics that can move the decks within the vessel to enable the vessel to carry vehicles of varying sizes.

28. Although some smaller-wheeled freight conceivably can be put into containers and loaded by crane onto a container ship, transporting such vehicles on RoRo vessels is the preferred method because:

a. To transport a vehicle inside a container, special inserts are typically placed inside the container to maximize the number of vehicles that can fit inside;

b. Once a vehicle is driven into a container, it needs to be secured within the container and then transported to a port to be loaded by crane onto a vessel;

c. The steps outlined above take considerably more time than rolling vehicles onto RoRo vessels and are associated with additional costs;

d. The cost of shipping a vehicle in a container is typically higher than, and can be as much as two to three times the cost of, shipping that same vehicle via a RoRo vessel;

e. Vehicles may be damaged when they are driven in and out of containers, and their close proximity during shipping can also cause damage; and

f. If multiple vehicles are placed inside a container in a stacked fashion, there is a risk that oil or other fluids from one car can leak on other cars, also causing damage.

29. There are no reasonable substitutes for Vehicle Carrier Services for shipping wheeled freight over deep seas.

30. Plaintiffs and members of the proposed Class (collectively, "Direct Purchasers") include companies that arrange for the international ocean transportation of vehicles and other individuals or entities purchasing directly from any Defendant (or from any current or former subsidiary or affiliate of any Defendant) Vehicle Carrier Services for shipments to and from the United States.

SUSCEPTIBILITY OF VEHICLE CARRIER SERVICES TO COLLUSION

31. Vehicle Carrier Services are particularly susceptible to collusion because of high concentration, the commodity-like nature of the services at issue, high barriers to entry, inelasticity of demand, and ample opportunities for the Defendants to meet and collude.

Concentration

32. During the Class Period, Defendants accounted for roughly two-thirds or more of the global capacity of Vehicle Carrier Services.

Commodity-Like Services

33. Vehicle Carrier Services are homogeneous, commodity-like services. Purchasers of Vehicle Carrier Services choose providers almost exclusively based on price, because the

qualitative differences between each provider are negligible. Thus, from the purchasers' perspective, providers of Vehicle Carrier Servicers are essentially interchangeable.

34. The homogenous and interchangeable nature of Vehicle Carrier Services makes it easier to create and maintain an unlawful conspiracy, agreement, or cartel because coordinating conduct and prices, as well as policing those collusively set prices, is less difficult than if Defendants had distinctive services that could be differentiated based upon features other than price.

Barriers to Entry

35. There are substantial entry barriers that a new provider of Vehicle Carrier Services would face. A new entrant would encounter significant hurdles, including multi-million dollar start-up costs associated with acquiring ships and equipment, distribution infrastructure, and hiring skilled labor and a sales force.

36. Additionally, the lack of reputation and customer relationships can be problematic for a new entrant; at least one Defendant has publicly stated that the strong relationships that vehicle carriers forge with their customers create high barriers to entry.

Demand Inelasticity

37. Demand for Vehicle Carrier Services is highly inelastic because there are no close substitutes. A RoRo vessel is built specifically to transport the large, irregular shapes of wheeled vehicles and to enable those vehicles to be quickly and efficiently loaded and unloaded from the vessel.

38. Therefore, a price increase in Vehicle Carrier Services does not induce purchasers into using other types of cargo vessels or services. By allowing producers to raise prices without triggering customer substitution and lost sales revenue, inelastic demand facilitates collusion.

Opportunities for Conspiratorial Communications

39. The shipping industry has been characterized as a small world where many of the key figures know each other. Many employees of the Defendants have spent their entire careers in the shipping industry. Key employees have also transferred between the Defendant companies, fostering familiarity and connections between professed competitors and facilitating high-level coordination for the conspiracy.

40. Defendants are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Defendants are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one in Tokyo on March 2, 2010, that was attended by representatives of several Defendants, including Eizo Murakami (of "K" Line) and Yasuo Tanaka (of NYK Line).

41. Defendants CSAV (through its subsidiary CSAV Group North America), NYK America, "K" Line America, MOL (through its subsidiary, MOL (America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

42. Defendants "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

43. Defendants "K" Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

44. Defendants CSAV, "K" Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

45. Defendants CSAV, "K" Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

46. Defendants NYK Line, "K" Line, and MOL are members of the Japan Shipowners' Association, a trade association based in Japan.

47. These associations—and the meetings, trade shows, and other industry events that stem from them—provided Defendants with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy.

48. Defendants also routinely enter into vessel-sharing agreements whereby they reserve space on each other's ships. These sharing or chartering agreements are very common in the international maritime shipping industry.

49. A "space charter" occurs when a shipping carrier charters space on another shipping carrier's vessel. The opportunity for a space charter arises when a shipping carrier has less than full capacity on its ship and another shipping carrier needs additional capacity.

50. A "time charter" occurs when a shipping carrier fully charters another vehicle carrier's vessel. The opportunity for a time charter arises when a vehicle carrier would otherwise send a vessel home empty and another vehicle carrier needs space.

51. While ostensibly entered into to optimize utilization and increase efficiency, such sharing and chartering agreements also provide opportunities for Defendants to discuss Vehicle Carrier Services market shares, routes, and rates and to engage in illegal conspiracies to fix prices, rig bids, and allocate customers and markets.

DEFENDANTS' ANTICOMPETITIVE CONDUCT

52. Since at least 2000, Defendants have engaged in a continuous and wide-ranging conspiracy to restrain competition for the sale of Vehicle Carrier Services. Defendants have conspired to fix, and have fixed, prices for Vehicle Carrier Services, allocate customers for Vehicle Carrier Services, and restrict the supply of Vehicle Carrier Services. Defendants'

conspiracy has resulted in higher prices of Vehicle Carriers Services for shipments to and from the United States.

53. Plaintiffs plead the following known anticompetitive acts as exemplars of Defendants' conduct in the provision of Vehicle Carrier Services; Defendants' persistent and pervasive acts restrained trade and caused prices to be artificially inflated in the sale of Vehicle Carrier Services for shipments to and from the United States.

54. Because Defendants' conspiracy was secret in nature, and because Defendants took steps to conceal their anticompetitive agreements, Plaintiffs cannot yet know all the ways that Defendants conspired. On information and belief, Plaintiffs allege that Defendants engaged in acts in furtherance of their conspiracy in addition to those specifically alleged in this Complaint, and that such additional acts also restrained trade in the sale of Vehicle Carrier Services for shipments to and from the United States.

Defendants Conspired to Reduce Vehicle Carrier Services Fleet Capacity

55. During the Class Period, Defendants' executives had frequent communications regarding reducing Vehicle Carrier Services capacity, and they reached agreements concerning the capacity reduction. These capacity reductions, and the higher prices that resulted from them, were an effect of Defendants' conspiracy and were not caused by natural market forces.

56. Defendants reduced capacity by agreeing to scrap and "layup" vessels. Scrapping refers to destroying a vessel by breaking it up and selling the pieces for scrap. A layup occurs when a vessel is taken out of commission but not scrapped. In a "cold layup," the vessel sits idle without a crew and is not maintained. In a "hot layup," the vessel is staffed and maintained but not put into service. The costs for putting a vessel back into service are higher after a cold layup than after a hot layup.

57. During the Class Period, the Defendants discussed scrapping vessels, vessel layups, and plans for building new vessels. In connection with those discussions, Defendants reached agreements to control or reduce capacity, which resulted in artificially inflated prices for Vehicle Carrier Services for shipments to and from the United States.

58. For instance, from the late 1990s through 2002, executives from MOL, "K" Line, NYK Line, HAL, and WWL met twice a year—once in Japan and once in Europe—to discuss and agree on vessel scrapping and building plans and to exchange data. They also discussed Vehicle Carrier Services pricing for routes where they believed prices were particularly low. These Defendants continued their data exchange into 2003.

59. In 2008, demand for Vehicle Carrier Services fell dramatically as a result of the worldwide financial crisis, leaving Defendants with excess capacity. In response, Defendants conspired to reduce the supply of Vehicle Carrier Services by engaging in a number of acts, including the following:

a. In late 2008 or early 2009, executives from MOL and NYK Line met and agreed to reduce their respective fleet sizes by scrapping RoRo vessels. They also agreed to resist price reduction requests from customers;

b. "K" Line likewise agreed to scrap some of its vessels after being approached by MOL or NYK Line;

c. During late 2008 to early 2009, MOL also discussed fleet reductions and reached understandings concerning such reductions, with WWL, HAL, and EUKOR;

d. In or around 2009, WWL, HAL, and "K" Line agreed to layup RoRo vessels to reduce capacity;

e. Mr. Shishido of MOL, Mr. Kato of NYK Line, Mr. Euren of WWL, Mr. Hagman of HAL, and Mr. Murakami of "K" Line were involved in these discussions and ensuing agreements to scrap or layup vessels;

f. As a result of Defendants' agreements, MOL scrapped approximately 40 vessels, NYK Line scrapped approximately 40 vessels, "K" Line scrapped approximately 25 vessels, and HAL scrapped approximately 10 vessels. In total, the Defendants scrapped at least 20% of the vessels across the industry and placed an additional 15% of PCTCs in layups;

g. Almost no orders for new vessels were placed between 2009 and 2011.

60. In addition to scrapping and layups, Defendants controlled excess capacity by "slow steaming" their RoRo vessels to create artificial supply shortages. This practice lowers the speed of the vessels and increases sailing time, which in turn decreases capacity. As a result of the Defendants' agreements to slow-steam their vessels, by mid-2011, NYK Line, "K" Line, and MOL had reduced speeds on nearly every vessel, and NYK Line reduced PCTC speeds from 18-20 to 12-15 knots.

61. The Defendants' agreements to control or reduce capacity through vessel scrapping, layups, and slow-steaming reduced capacity and resulted in artificially high prices paid by Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

Defendants Conspired to Fix, Raise, or Artificially Maintain Prices for Vehicle Carriers Services

62. In addition to their communications and agreements to control or reduce capacity, Defendants met periodically throughout the Class Period and agreed on the prices to charge for Vehicle Carrier Services. The following are some examples:

a. Beginning in February 1997, MOL, NYK Line, and "K" Line met multiple times at MOL's office in Tokyo to discuss the upcoming renewal of a customer's contract for Vehicle Carrier Services. Participants at these meetings included Messrs. Hagino and Kawano of NYK Line and Messrs. Itage and Tanaka of "K" Line. Representatives from MOL, NYK Line, and "K" Line agreed that each would ask customers for a price increase for the shipment of vehicles from Japan to the United States and from the United States to Japan;

b. Around 2002 or 2003, MOL and "K" Line were both shipping vehicles from Europe to North America and agreed to each request a 3% to 5% price increase;

c. In late 2007, a customer issued a tender for shipments of vehicles from Europe to the United States; executives from MOL and "K" Line discussed the tender and agreed to request a price increase from the customer;

d. In late 2007 and early 2008, executives from MOL, NYK Line, and "K" Line met multiple times to try to obtain a 10% price increase for Vehicle Carrier Services. For example, Mr. Kusunose of NYK Line and Mr. Fukumoto of MOL met in November 2007 and agreed to increase pricing for Vehicle Carrier Services in 2008. They also agreed to convince "K" Line to increase its rates. The following month, Mr. Shishido of MOL and Mr. Kato of NYK Line had dinner in a restaurant in Tokyo and discussed seeking price increases in 2008. On or about January 11, 2008, Mr. Shishido and Mr. Kato had lunch with Mr. Murakami of "K" Line and agreed to a goal of a 5% increase in 2008. On or about January 22, 2008, Mr. Fukumoto (of MOL), Mr. Kusunose (of NYK Line), and Mr. Uchiyanu (of "K" Line) agreed on a target of a 10% price increase for 2008; they further

agreed that each of the three companies would approach its principal customers and initially ask for a 10% price increase for Vehicle Carrier Services. In March 2008, Mr. Fukumoto (of MOL), Mr. Kusunose (of NYK Line), and Mr. Yamauchi (of "K" Line) met and discussed the 2008 price increase. MOL, NYK Line, and "K" Line then proceeded to approach their customers as agreed, and they obtained price increases;

e. In fall 2008, Mr. Watanabe (of MOL), Mr. Kurosawa (of NYK Line), and Mr. Yokoyama (of "K" Line) communicated and agreed to seek a certain price increase for Vehicle Carriers Services. These executives further agreed that NYK Line and "K" Line would share a customer's business from Japan to the west coast of the United States, and that NYK Line, "K" Line, and MOL would share the customer's business from Japan to the east coast of the United States; and

f. In November 2011, executives from MOL and HAL met for dinner and discussed and agreed upon Vehicle Carrier Services rates from New York to West Africa, a route on which they both offered service.

63. Defendants' agreements to fix, raise, or artificially maintain the price of Vehicle Carrier Services resulted in artificially high prices paid by Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

Defendants Agreed Not to Compete for Customers for Vehicle Carrier Services

64. In addition to their communications and agreements to control or reduce capacity and to fix, raise, or artificially maintain the price of Vehicle Carrier Services, throughout the Class Period, Defendants met periodically and agreed not to compete for customers for Vehicle Carrier Services. The following are some examples:

a. In 2001, MOL and HAL agreed to allocate the transportation of vehicles from the United States to the Middle East. MOL was not the incumbent and wanted this business. Executives from MOL and HAL discussed and agreed that HAL would not bid in exchange for MOL agreeing to use HAL vessels on the route if it won the business. MOL won the business and then used HAL's vessels, as agreed;

b. In 2001 or 2002, MOL, WWL, and NYK Line agreed to not compete to transport a customer's vehicles from the United States to Japan. At the time, MOL was the incumbent, and MOL asked WWL to not compete with MOL when the customer issued a tender. MOL told NYK Line what it planned to bid for the business and asked NYK Line to bid a higher amount. Both WWL and NYK Line agreed to do as MOL requested;

c. In 2002 or 2003, MOL, WWL, and HAL agreed to allocate a customer's business. After the customer issued a tender for transporting its vehicles from Europe to the United States, executives from MOL approached executives from WWL about the customer's business from Thailand to Europe. WWL was the incumbent on the route from Europe to the United States, and MOL wanted to obtain the business from Thailand to Europe. MOL and WWL agreed that MOL would not compete for WWL's route from Europe to the United States, and in exchange, WWL would not compete with MOL in MOL's attempt to obtain the Thailand to Europe business. In furtherance of this agreement, WWL gave MOL a price to bid as part of the tender for Europe to the United States. Similarly, MOL and Mr. Ervik of HAL agreed that HAL would not compete with MOL in MOL's attempt to obtain

the Thailand to Europe business, and in exchange MOL would not compete for HAL's business on routes from the United States to Africa and the Middle East;

d. In 2004, MOL and WWL agreed to not compete for each other's business with respect to two customers. MOL and WWL agreed that WWL would not compete with MOL for MOL business in the transport of one of the customer's vehicles from South Africa to the United States, and in exchange MOL would not compete for WWL's business in the transport of both customers' vehicles from Europe to the United States;

e. In 2008 or 2009, MOL and "K" Line agreed to not compete for a customer's business. MOL was the incumbent for transporting that customer's vehicles from the United States to South Africa. Mr. Tsugi of "K" Line agreed that "K" Line would bid a higher rate than MOL did for this business, and in exchange Mr. Ito of MOL agreed to not compete for "K" Line's business from the United States to Brazil and Argentina;

f. In 2010, CSAV and MOL agreed that MOL would not compete for CSAV's business to transport a customer's vehicles from the United States to Colombia from 2010 to 2012; in furtherance of this agreement, CSAV gave MOL a price to bid;

g. In February or March of 2012, Mr. Noguchi (of MOL) and Mr. Tsuneda (of WWL) met in person and agreed that MOL would not compete for WWL's business transporting vehicles from the United States to China, and in exchange, WWL would not pursue business transporting a customer's vehicles from the United States to Korea. In furtherance of this agreement, WWL gave MOL a

price to bid on the United States to China route, and MOL gave WWL a price to bid on the United States to Korea route; and

h. In August 2011, MOL, NYK Line, and "K" Line agreed to allocate the shipment of a customer's trucks and buses from Japan to the United States. All three companies were incumbent carriers on the route, with NYK Line having the largest share. They agreed what amount of business each company would seek and at what rates. They further agreed that if any of the three companies did not obtain the specified business, the others would share some of the business that they won. NYK Line coordinated the agreement between the companies and provided each with the rates to bid.

65. Defendants' agreements to not compete for customers' business resulted in artificially high prices paid by Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

Current Government Investigations Targeting Defendants

66. United States, Canadian, Japanese, and EU competition authorities have initiated a global, coordinated antitrust investigation concerning the unlawful conspiracy alleged in this Complaint.

67. A grand jury has been convened in Baltimore, Maryland to investigate alleged anticompetitive conduct involving Vehicle Carrier Services and has issued subpoenas to certain of the Defendants.

68. In early September 2012, the Japan Fair Trade Commission ("JFTC"), the European Commission, and the DOJ carried out raids and unannounced inspections at the offices of a number of the Defendants, including NYK Line, MOL, "K" Line, WWL, EUKOR, and

HAL; news organizations have reported that NMCC was also being investigated for the same unlawful conduct.

69. On or about February 27, 2014, the DOJ filed a criminal Information charging that, from as early as January 2000 through at least September 2012, CSAV conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. CSAV pleaded guilty to the criminal Information on or about February 27, 2014.

70. The criminal Information against CSAV further states that, during the relevant period, CSAV and its co-conspirators attended meetings and engaged in communications regarding bids and tenders in which they agreed to allocate customers by not competing for each other's existing business for certain customers on certain routes; they agreed to not compete against each other on certain tenders by not bidding or agreeing to the prices they would bid on such tenders; they discussed and exchanged prices so as to not undercut each other's pricing on certain tenders; they submitted bids in accordance with agreements reached; and they provided RoRo services at collusive and non-competitive prices.

71. On or about March 18, 2014, the JFTC issued cease and desist orders and fines against NYK Line, "K" Line, WWL, and NMCC.

72. The anticompetitive agreements described in this Complaint were not filed with the Federal Maritime Commission ("FMC").

73. The anticompetitive agreements described in this Complaint violate the antitrust laws and relate to conduct that is not protected under the Shipping Act of 1984, 46 U.S.C. §§ 40101 - 41309; as a result, the Defendants could not have had a reasonable expectation that

agreements encompassing such conduct were filed with the FMC and in effect during the Class Period.

74. During the Class Period, the FMC did not approve, modify, or amend the rates charged by Defendants for Vehicle Carrier Services for shipments to and from the United States.

DEFENDANTS' CONSPIRACY RESULTED IN HIGHER PRICES FOR PURCHASERS OF VEHICLE CARRIER SERVICES

75. As a result of their unlawful contract, combination, or conspiracy, Defendants succeeded in restricting output and fixing, raising, maintaining, or stabilizing prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States.

76. Defendants' agreements to reduce capacity and increase prices in 2008 affected all direct purchasers of Vehicle Carrier Services, including for shipments to or from the United States.

77. By agreeing to fix, raise, or artificially maintain prices of Vehicle Carriers Services, Defendants fixed, raised, maintained, or stabilized prices charged to all direct purchasers, including for shipments to and from the United States, even where a particular agreement may have been made with respect to some customers.

78. Plaintiffs and the other Class Members have been injured in their business and property because they have paid more for Vehicle Carrier Services than they would have paid in a competitive market. Such injuries are of the type the antitrust laws were designed to prevent and flow directly from Defendants' unlawful conduct.

79. Defendants' unlawful contract, combination, or conspiracy has had at least the following effects:

a. Competition for Vehicle Carrier Services has been restrained;

b. Prices paid by Plaintiffs and the members of the Class for Vehicle Carrier Services were fixed, stabilized, or maintained at supra-competitive levels throughout the world, including prices paid for Vehicle Carrier Services to and from the United States;

c. Customers and markets for Vehicle Carrier Services were allocated among Defendants and their co-conspirators;

d. Price competition regarding the sale of Vehicle Carrier Services was restrained, suppressed, or eliminated throughout the world, including for shipments to and from the United States, thus raising the prices of Vehicle Carrier Services above what they would have been absent Defendants' actions; as a result, Plaintiffs and the other members of the Class paid more for Vehicle Carrier Services than they would have paid in a competitive marketplace;

e. Direct purchasers of Vehicle Carrier Services have been deprived of the benefits of free and open competition; and

f. As a direct and proximate result of the unlawful combination, contract or conspiracy, Plaintiffs and the members of the Class have been injured and financially damaged in their businesses and property, in amounts to be determined.

80. The effects of Defendants' unlawful conduct are supported by economic data. Pricing for Vehicle Carrier Services is correlated with time charter rates and time charter rates can serve as a rough proxy for contemporaneous Vehicle Carrier Service rates charged by Defendants and their co-conspirators. An examination of time charter rates published by broker R.S. Platou shows that after a decade of relatively flat PCTC charter rates from 1990-2000, rates

began to increase substantially in 2001. Between 2001 and 2008, R.S. Platou data show that rates increased by approximately 150%. This rate increase cannot be explained by normal market forces such as increased demand or increased costs:

a. Demand for Vehicle Carrier Services increased only modestly during this time period. According to the United States International Trade Commission, U.S. imports and exports of automobiles increased by 24% from 2001 to 2008 (3% a year on average), far less than the 150% reported increase in PCTC charter rates (almost 20% a year on average); and

b. Increases in prices for Vehicle Carrier Services far outpaced any increases in expenses during the same period.

81. As explained in paragraph 59, *supra*, demand for Vehicle Carrier Services fell dramatically in late 2008 as a result of the worldwide financial crisis, and Defendants jointly responded to this drop in demand by agreeing to scrap and lay up a substantial number of vessels, and then implementing those agreements. In addition, Defendants continued to conspire to allocate customers and markets, rig bids, and fix, raise, or artificially maintain prices for Vehicle Carrier Services. As a result of these various anticompetitive acts, prices for Vehicle Carrier Services began rising steadily starting in 2009 at a rate that cannot be explained or justified by fuel costs or demand.

82. Defendants' conduct throughout the Class Period resulted in artificially high prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States, and as a result Class Members paid more for Vehicle Carriers Services than they would have absent Defendants' unlawful conduct.

EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT

83. Before September 6, 2012, when the global investigation of Defendants' misconduct was first publicly reported, a reasonable person under the circumstances would have believed the Vehicle Carrier Services to be a competitive industry and, thus, would not have been alerted to begin to investigate the legitimacy of Defendants' prices for Vehicle Carrier Services before that time.

84. Conspiracies to fix prices, rig bids, and allocate customers and markets are, by their very nature, inherently self-concealing. If a conspiracy is to be successful at fixing prices, the participants must ensure that customers do not discover the existence of the conspiracy.

85. Defendants' acts in furtherance of the conspiracy were concealed and carried out in a manner specifically designed to avoid detection. Plaintiffs and members of the Class did not discover and could not have discovered the alleged contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence.

86. Because Defendants' agreements, understandings, or conspiracies were kept secret until September 6, 2012, Plaintiffs and members of the Class before that time were unaware of Defendants' unlawful conduct alleged in this Complaint, and they did not know before that time that they were paying supra-competitive prices for Vehicle Carrier Services during the Class Period.

87. None of the facts or information available to Plaintiffs and members of the Class, if investigated with reasonable diligence, would have led to the discovery of the conspiracy alleged in this Complaint prior to September 6, 2012.

88. Moreover, Defendants affirmatively concealed their conspiracy by falsely claiming that the Vehicle Carrier Services market was competitive and creating the illusion that

prices were rising as a result of increased demand and tight supply. For example, Defendants stated:

a. "For our customers, quality services at a competitive cost are the essence of excellence." Mitsui O.S.K. Lines, Ltd. Annual Report 2000, at 9.

b. "Market prospects for 2003 are characterised by a high degree of both political and economic uncertainty. The year as a whole is expected to show relatively weak economic growth and reduced demand for vehicles in some of the world's principal regions." Wilh. Wilhelmsen ASA Annual Report 2002, at 11.

c. "Developments in the car carrier and ro-ro markets are of major importance to both Wallenius Wilhelmsen Lines and EUKOR. This business will continue to make the biggest contribution to the group's results. Both liner and car carrier operations . . . are affected by general trends in the world economy." Wilh. Wilhelmsen ASA Annual Report 2002, at 15.

d. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2003, at 10.

e. "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at 23.

f. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2005, at 19.

g. "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at 42.

h. "Car sales and demand for vehicle transport are expected to remain buoyant. The tight market for car shipments is accordingly expected to continue in 2005, even

with the relatively large number of new car carriers due to be delivered during the year." Wilh. Wilhelmsen ASA Annual Report 2004, at 9.

i. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2006, at 15.

j. "CSAV participates in a highly competitive market in which demand for cargo transport is directly affected by fluctuations in global economic growth." *Id.* at 149.

k. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2007, at 15.

l. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 39.

m. "The 'K' Line Group is doing business in all international markets, and is involved in competition with many shipping companies at home and abroad." "K" Line Annual Report 2008, at 55.

n. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2008, at 17.

o. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 35.

p. "The 'K Line Group promises to comply with applicable laws, ordinances, rules and spirit of the international community and conduct its corporate activities through fair, transparent and free competition." "K" Line Annual Report 2009, at 1.

q. "Global automobile marine transport volume was robust through the middle of 2008, resulting in a severe shortage of vessels in the marine transport market, a market in which prices are based on the relationship between supply and demand. As a result, shipping rates were on the increase." NYK Annual Report 2009, at 8.

r. "Demand for ocean transportation of ro-ro cargo to Oceania remained at low levels through the year, while car volumes rose in the latter half of the year. Trades involving emerging markets such as China, South America, India and Africa offered relatively healthy volumes through most of the year, although fierce competition put significant pressure on rates." Wilh. Wilhelmsen ASA Annual Report 2009, at 11.

s. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2009, at 17.

t. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 36.

u. "Through its capital intensity and cyclical nature, the shipping segment has historically represented higher volatility and financial risk than maritime services. The car/ro-ro shipping has during the recent history also represented the single largest investment area and exposure for the group and its shareholders . . . . Demand for transportation of cars and other cargo has improved significantly, primarily during the second half of the year, and combined with better mix of cargo types this has positively affected the profitability of the fleet." Wilh. Wilhelmsen ASA Annual Report 2010, at 19-20.

v. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2010, at 15.

w. "CSAV works in a very competitive market, in which variations in global economic growth directly affect the demand for cargo transport." *Id*. at 35.

x. "The results of the car-carrying services were severely affected by the fall in global demand seen in 2011 . . . [a]dded to the weak global demand for car carriers and the consequent under-utilization of ships was a sharp rise in oil prices." CSAV Annual Report 2011, at 22.

y. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2011, at 15.

z. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." *Id.* at 19.

aa. "In addition to Japanese marine transport operators, the NYK Group competes with international shipping companies operating throughout the globe, and the competitive situation is growing more intense." NYK Annual Report 2012, at 102.

89. Thus, Defendants and their co-conspirators engaged in a successful anti-competitive conspiracy concerning Vehicle Carrier Services, which they affirmatively concealed.

90. By reason of the foregoing, the running of any statute of limitations has been tolled with respect to the claims that Plaintiffs and members of the Class have alleged in this Complaint.

CLASS ACTION ALLEGATIONS

91. Plaintiffs brings this action on behalf of themselves and as a class action under the provisions of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class (the "Class"):

> All persons and entities that purchased Vehicle Carrier Services for shipments to or from the United States directly from any of the Defendants or any current or former predecessor, subsidiary, or affiliate of each, at any time during the period from January 1, 2000 to December 31, 2012. This Class excludes all federal, state, governmental, and national entities and Defendants and their respective predecessors, subsidiaries, affiliates, and business partners.

92. Plaintiffs believe that there are thousands of Class members located throughout the entire United States, the exact number, location, and identities of which are known by Defendants, making the Class so numerous and geographically dispersed that joinder of all members is impracticable.

93. There are numerous questions of law and fact common to the Class, which questions relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to reduce capacity, allocate markets for, or fix, raise, maintain, or stabilize the prices of, Vehicle Carrier Services for shipments to and from the United States;

b. The identity of the participants of the conspiracy;

c. The duration of the conspiracy and the nature and character of the acts performed by Defendants and their agents and co-conspirators in furtherance of the conspiracy;

d. Whether the alleged conspiracy violated Section 1 of the Sherman Act;

e. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of the Plaintiffs and the other members of the Class;

f. Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from the Plaintiffs and the other members of the Class;

g. The effect of the conspiracy on the prices of Vehicle Carrier Services for shipments to and from the United States during the Class Period; and

h. The appropriate class-wide measure of damages.

94. Plaintiffs are direct purchasers of Vehicle Carrier Services and their interests are coincident with and not antagonistic to those of the other members of the Class. Plaintiffs are members of the Class, have claims that are typical of the claims of the Class Members, and will fairly and adequately protect the interests of the members of the Class. In addition, Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

95. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

96. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

97. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously,

efficiently and without duplication of effort and expense that numerous individual actions would engender. The Class is readily identifiable through the files of Defendants, and prosecution as a class action will eliminate the possibility of repetitious litigation. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such as is asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

CAUSE OF ACTION
Violation of Section 1 of the Sherman Act (15 U.S.C. § 1)

98. Defendants and their agents and co-conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

99. Defendants' acts in furtherance of their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

100. Beginning at least as early as January 1, 2000 and continuing through at least December 31, 2012, Defendants and their agents entered into an agreement in restraint of trade to reduce capacity, allocate customers and routes, rig bids, and otherwise to raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States, thereby creating anticompetitive effects.

101. Defendants' anticompetitive acts involved United States domestic commerce and import commerce, and had a direct, substantial, and foreseeable effect on United States commerce by raising and fixing prices for Vehicle Carrier Services for shipments to and from the United States.

102. The conspiratorial acts and combinations have caused unreasonable restraints with respect to Vehicle Carrier Services.

103. As a result of Defendants' unlawful conduct, Plaintiffs and the members of the Class have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

104. In formulating and carrying out the alleged agreement, Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth in this Complaint.

105. Defendants' conspiracy had the following effects, among others:

a. Price competition for Vehicle Carrier Services for shipments to and from the United States has been restrained, suppressed, or eliminated for shipments to and from the United States;

b. Prices for Vehicle Carrier Services sold by Defendants, their divisions, subsidiaries, and affiliates have been fixed, raised, stabilized, and maintained at artificially high, non-competitive levels for shipments to and from the United States;

c. Plaintiffs and members of the Class who purchased Vehicle Carrier Services from Defendants, their divisions, subsidiaries, and affiliates have been deprived of the benefits of free and open competition.

106. As a direct and proximate result of Defendants' anticompetitive conduct, Plaintiffs and members of the Class have been injured in their business or property by paying more for Vehicle Carrier Services than they would have paid in the absence of the conspiracy.

107. The alleged contract, combination, or conspiracy is a *per se* violation of the federal antitrust laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

a) That the Court certify this action as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and that Plaintiffs be deemed adequate representatives of the Class;

b) That the Court declare Defendants' contract, combination, or conspiracy to have violated Section 1 of the Sherman Act, which violations injured Plaintiffs and the Class members in their business and property;

c) That Plaintiffs and the Class members recover damages, as provided under the federal antitrust laws, and that a joint and several judgment in their favor be entered against Defendants in an amount to be trebled in accordance with such laws;

d) That Plaintiffs and the Class members recover their costs of the suit, including reasonable attorneys' fees, as provided by law; and

e) That the Court direct further relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

Dated: June 2, 2014

/s/ *Robert P. Donovan*

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: VEHICLE CARRIER SERVICES **ANTITRUST LITIGATION** THIS DOCUMENT RELATES TO: *All End-Payor Actions*	Master Docket No. 13-3306 (ES) (JAD) (MDL No. 2471) CONSOLIDATED AMENDED CLASS ACTION COMPLAINT and JURY TRIAL DEMANDED

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Plaintiffs Jill M. Alban, Grant M. Alban, Mary Arnold, Al Baker, Katrina Bonar, Emmett R. Brophy, Steven Bruzonsky, Monica Bushey, Craig Buske, Doda "Danny" Camaj, Stephanie B. Crosby, Melinda Deneau, Jennifer Dillon, Jeffrey L. Gannon, Pamela Goessling, Thomas Goessling, Sean Gurney, Sheryl Haley, Lesley Denise Hart, Bruce Hertz, Elizabeth Ashley Hill nèe Edwards Maria Kooken, Adair Lara, Christine Laster, Kori Lehrkamp, Michael Lehrkamp, John Leyva, Joan MacQuarrie, Daniel Morris, Tony Nikprelaj, Gustavo Adolfo Perez, Judy A. Reiber, Roberta Rothstein, Jeffrey Rubinstein, Alexandra Scott, Jason Smith, Catherine Taylor, Richard Tomasko, and Demian Vargas ("Plaintiffs"), on behalf of themselves and all others similarly situated (the "Classes" as defined below), upon personal knowledge as to the facts pertaining to themselves and upon information and belief as to all other matters, and based on the investigation of counsel, bring this class action for damages, injunctive relief and other relief pursuant to federal antitrust laws and state antitrust, unfair competition, and consumer protection laws, and the common law of unjust enrichment, demand a trial by jury, and allege as follows:

NATURE OF ACTION

1. This lawsuit is brought as a proposed class action against Defendants Nippon Yusen Kabushiki Kaisha, NYK Line (North America) Inc., Mitsui O.S.K. Lines, Ltd., Mitsui O.S.K. Bulk Shipping (USA), Inc., World Logistics Service (USA) Inc., Höegh Autoliners AS, Nissan Motor Car Carriers Co. Ltd., Kawasaki Kisen Kaisha, Ltd., "K" Line America, Inc., Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics Americas LLC, EUKOR Car Carriers Inc., Compañía Sud Americana De Vapores S.A., and CSAV Agency North America, LLC (all as defined below and collectively "Defendants"), and unnamed co-conspirators, providers of Vehicle Carrier Services (defined below) globally and in the United

States, for engaging in a conspiracy to fix, raise, maintain and/or stabilize prices, and allocate the market and customers for Vehicle Carrier Services.

2. "Vehicle Carriers" transport large numbers of cars, trucks, and other automotive vehicles including agriculture and construction equipment (collectively "new, assembled motor vehicles") across large bodies of water using specialized cargo ships known as Roll On/Roll Off vessels ("RoRos"). As used herein, "Vehicle Carrier Services" refer to the paid ocean transportation of new, assembled motor vehicles by RoRo.

3. Plaintiffs seek to represent all persons and entities in the United States who indirectly purchased from any Defendant or any current or former subsidiary or affiliate thereof, or any co-conspirator, Vehicle Carrier Services for personal use and not for resale, incorporated into the price of a new Vehicle purchased or leased during the period from and including January 1, 2000 through such time as the anticompetitive effects of Defendants' conduct ceased (the "Class Period").

4. The Defendants provide, market, and/or sell Vehicle Carrier Services throughout the United States.

5. The Defendants, and their co-conspirators (as yet unknown), agreed, combined, and conspired to fix, raise, maintain and/or stabilize prices and allocate the market and customers for Vehicle Shipping Services to and from the United States.

6. Competition authorities in the United States, the European Union, Canada and Japan have been investigating a global cartel among Vehicle Carriers since at least September 2012. The United States Department of Justice's Antitrust Division ("DOJ") and Canada's Competition Bureau ("CCB") are investigating unlawful, anticompetitive conduct in the market for ocean shipping of cars, trucks, construction equipment and other products. The Japanese Fair

Trade Commission ("JFTC") and European Commission Competition Authority ("EC") have also conducted coordinated dawn raids at the Tokyo and European offices of several of the Defendants.

7. On February 27, 2014, the DOJ announced that Defendant Compania Sud Americana de Vapores SA agreed to plead guilty and pay $8.9 million in criminal fines for price-fixing vehicle shipping services to and from the United States and elsewhere. Plaintiffs, based upon their experience in civil antitrust litigation following from criminal antitrust prosecutions by the DOJ, believe it likely that one of the Defendants is a so-called "amnesty applicant" pursuant to the DOJ's leniency program. A participant in an antitrust cartel is only eligible for participation in this program if it self-reports its cartel behavior to the DOJ, and is only entitled to the reduced damages provisions of the Antitrust Criminal Penalties Enhancement Reform Act if it provides full and timely cooperation to the victims of the cartel.

8. On March 19, 2014, the JFTC announced cease and desist orders and surcharge payment orders totaling more than $233 million against Defendants Nippon Yusen Kabuskhiki Kaisha, Kawashi Kisen Kaisha Ltd., Nissan Motor Car Carrier Co. Ltd., and Wallenius Wilhelmsen Logistics AS for price-fixing Vehicle Carrier Services.

9. Defendants and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the Vehicle Carrier Services market by agreeing to fix, raise, stabilize and/or maintain the prices of, and allocate the market and customers for Vehicle Carrier Services sold to automobile manufacturers and others in the United States, and elsewhere, for the import and export of new, assembled motor vehicles to and from the United States. The combination and conspiracy engaged in by the Defendants and their co-conspirators was an unreasonable restraint of interstate and foreign trade and commerce in violation of the

Sherman Antitrust Act, 15 U.S.C. § 1, state antitrust, unfair competition, and consumer protection laws and the common law of unjust enrichment.

10. As a direct result of the anticompetitive and unlawful conduct alleged herein, Plaintiffs and the Classes paid artificially inflated prices for Vehicle Carrier Services incorporated into the price of a new, assembled motor vehicle purchased or leased during the Class Period, and have thereby suffered antitrust injury to their business or property.

JURISDICTION AND VENUE

11. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to secure equitable and injunctive relief against Defendants for violating Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also allege claims for actual and exemplary damages pursuant to state antitrust, unfair competition, and consumer protection laws, and the common law of unjust enrichment, and seek to obtain restitution, recover damages and secure other relief against the Defendants for violations of those state laws and common law. Plaintiffs and the Classes also seek attorneys' fees, costs, and other expenses under federal and state law.

12. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1), and Title 28, United States Code, Sections 1331 and 1337. This Court has subject matter jurisdiction of the state law claims pursuant to 28 U.S.C. §§ 1332(d) and 1367, in that (i) this is a class action in which the matter or controversy exceeds the sum of $5,000,000, exclusive of interests and costs, and in which some members of the proposed Classes are citizens of a state different from some of the Defendants; and (ii) Plaintiffs' state law claims form part of the same case or controversy as their federal claims under Article III of the United States Constitution.

13. Venue is proper in this district pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22), and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the affected interstate trade and commerce discussed below has been carried out in this District, and one or more of the Defendants reside, are licensed to do business in, are doing business in, had agents in, or are found or transact business in this District.

14. This Court has *in personam* jurisdiction over the Defendants because each, either directly or through the ownership and/or control of its subsidiaries, *inter alia*: (a) transacted business in the United States, including in this District; (b) directly or indirectly sold or marketed Vehicle Carrier Services throughout the United States, including in this District; (c) had substantial aggregate contacts with the United States as a whole, including in this District; or (d) were engaged in an illegal price-fixing conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable and intended effect of causing injury to, the business or property of persons and entities residing in, located in, or doing business throughout the United States, including in this District. The Defendants also conduct business throughout the United States, including in this District, and they have purposefully availed themselves of the laws of the United States.

15. The Defendants engaged in conduct both inside and outside of the United States that caused direct, substantial and reasonably foreseeable and intended anticompetitive effects upon interstate commerce within the United States.

16. The activities of the Defendants and their co-conspirators were within the flow of, were intended to, and did have, a substantial effect on interstate commerce of the United States. The Defendants' Vehicle Carrier Services are sold in the flow of interstate commerce.

17. New, assembled motor vehicles, the prices of which include Vehicle Carrier Services, transported from abroad by the Defendants and sold for use within the United States are goods brought into the United States for sale, and therefore constitute import commerce. To the extent any such new, assembled motor vehicles and the related Vehicle Carrier Services are purchased in the United States, and such new, assembled motor vehicles or Vehicle Carrier Services do not constitute import commerce, the Defendants' unlawful activities with respect thereto, as more fully alleged herein during the Class Period, had, and continue to have, a direct, substantial and reasonably foreseeable effect on United States commerce. The anticompetitive conduct, and its effect on United States commerce described herein, proximately caused antitrust injury to Plaintiffs and members of the Classes in the United States.

18. By reason of the unlawful activities hereinafter alleged, Defendants substantially affected commerce throughout the United States, causing injury to Plaintiffs and members of the Classes. The Defendants, directly and through their agents, engaged in activities affecting all states, to fix, raise, maintain and/or stabilize prices, and allocate the market and customers in the United States for Vehicle Carrier Services, which conspiracy unreasonably restrained trade and adversely affected the market for Vehicle Carrier Services.

19. The Defendants' conspiracy and unlawful conduct described herein adversely affected persons and entities in the United States who purchased new, assembled motor vehicles for personal use and not for resale, including Plaintiffs and the members of the Classes.

PARTIES

Plaintiffs

20. Plaintiff Jill M. Alban is a Montana resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

21. Plaintiff Grant M. Alban is a Montana resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

22. Plaintiff Mary Arnold is a Tennessee resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

23. Plaintiff Al Baker is a North Dakota resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

24. Plaintiff Katrina Bonar is a West Virginia resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

25. Plaintiff Emmett R. Brophy is a Wisconsin resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

26. Plaintiff Steven Bruzonsky is an Arizona resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

27. Plaintiff Monica Bushey is a Maine resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

28. Plaintiff Craig Buske is a Minnesota resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

29. Plaintiff Doda "Danny" Camaj is a New York resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

30. Plaintiff Stephanie B. Crosby is a Mississippi resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

31. Plaintiff Melinda Deneau is a New Hampshire resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

32. Plaintiff Jennifer Dillon is a Michigan resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

33. Plaintiff Elizabeth Ashley Hill nèe Edwards is an Arkansas resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

34. Plaintiff Jeffrey L. Gannon is a Kansas resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

35. Plaintiff Pamela Goessling is a Missouri resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

36. Plaintiff Thomas Goessling is a Missouri resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

37. Plaintiff Sean Gurney is a Hawaii resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

38. Plaintiff Sheryl Haley is a Utah resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

39. Plaintiff Lesley Denise Hart is a South Carolina resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

40. Plaintiff Bruce Hertz is a Florida resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

41. Plaintiff Maria Kooken is a Nebraska resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

42. Plaintiff Adair Lara is a California resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

43. Plaintiff Christine Laster is a North Carolina resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

44. Plaintiff Kori Lehrkamp is a South Dakota resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

45. Plaintiff Michael Lehrkamp is a South Dakota resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

46. Plaintiff John Leyva is a Nevada resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

47. Plaintiff Joan MacQuarrie is a California resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

48. Plaintiff Daniel Morris is an Oregon resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

49. Plaintiff Tony Nikprelaj is a Michigan resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

50. Plaintiff Gustavo Adolfo Perez is a Florida resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

51. Plaintiff Judy A. Reiber is a Minnesota resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

52. Plaintiff Roberta Rothstein is a District of Columbia resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

53. Plaintiff Jeffrey Rubinstein is a New York resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

54. Plaintiff Alexandra Scott is an Iowa resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

55. Plaintiff Jason Smith is a Wisconsin resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

56. Plaintiff Catherine Taylor is a Massachusetts resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

57. Plaintiff Richard Tomasko is a Vermont resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

58. Plaintiff Demian Vargas is a New Mexico resident who purchased Vehicle Carrier Services indirectly from one or more Defendants.

Defendants

NYK Line Defendants

59. Defendant Nippon Yusen Kabushiki Kaisha ("NYK Line") is a Japanese company. NYK Line has subsidiaries acting as its agents in the United States, including in Secaucus, New Jersey. NYK Line – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped new, assembled motor vehicles to and from the Unites States, including to and from this District, during the Class Period. NYK Line – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

60. Defendant NYK Line North America ("NYK America") is a wholly owned subsidiary of NYK Line. It is headquartered in Secaucus, New Jersey and acts as Defendant NYK Line's agent in the United States. At all times during the Class Period, its activities in the

United States were under the control and direction of NYK Line, which controlled its policies, sales, and finances. NYK America shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. NYK America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

MOL Defendants

61. Defendant Mitsui O.S.K. Lines, Ltd. ("MOL") is a Japanese company. MOL has subsidiaries acting as its agents in the United States and has offices throughout the country, including headquarters in Lombard, Illinois. MOL – directly and/or through its subsidiaries, which it wholly owned and/or controlled – shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. MOL – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also, provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

62. Defendant Mitsui O.S.K. Bulk Shipping (USA), Inc. ("MOL USA") is a wholly owned subsidiary of MOL and a New Jersey corporation. MOL USA acts as Defendant MOL's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of MOL, which controlled its policies, sales, and finances. MOL USA shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. MOL USA also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

63. Defendant World Logistics Service (USA) Inc. ("WLS") is a wholly owned subsidiary of MOL. It is headquartered in Long Beach, California and acts as Defendant MOL's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of MOL, which controlled its policies, sales, and finances. WLS shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. WLS provided, marketed and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

Höegh Defendants

64. Defendant Höegh Autoliners AS ("Höegh") is a Norwegian company. Höegh has subsidiaries acting as its agents in the United States. Höegh – directly and/or through its subsidiaries, which it wholly owned and/or controlled – shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. Höegh also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

NMCC Defendants

65. Defendant Nissan Motor Car Carriers Co. Ltd. ("NMCC") is a Japanese company. NMCC is owned by MOL, Höegh, and Nissan Motor Company. At all times during the Class Period, NMCC shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. NMCC also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

"K" Line Defendants

66. Defendant Kawasaki Kisen Kaisha, Ltd. ("'K' Line") is a Japanese company. "K" Line has subsidiaries acting as its agents in the United States. "K" Line – directly and/or through its subsidiaries, which it wholly owned and/or controlled – shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. "K" Line – directly and/or through its subsidiaries, which it wholly owned and/or controlled – provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

67. Defendant "K" Line America, Inc. ("'K' Line" Line America") is a wholly owned subsidiary of "K" Line. It is headquartered in Richmond, Virginia and acts as "K" Line's agent in the United States. At all times during the Class period, its activities in the United States were under the control and direction of "K" Line, which controlled its policies, sales, and finances. "K" Line America shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. "K" Line America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

WWL Defendants

68. Defendant Wallenius Wilhelmsen Logistics AS ("WWL") is a Norwegian-Swedish company. WWL is a joint venture between Wallenius Lines AB and Wilh. Wilhelmsen ASA. WWL has offices throughout the United States, including in New Jersey. WWL – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. WWL AS – directly and/or through its

subsidiaries, which it wholly owned and/or controlled –also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

69. Defendant Wallenius Wilhelmsen Logistics Americas LLC ("WWL Americas") is a New Jersey limited liability company. It is headquartered in Woodcliff Lake, New Jersey and acts as WWL's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of WWL, which controlled its policies, sales, and finances. WWL Americas shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. WWL Americas – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

EUKOR Defendants

70. Defendant EUKOR Car Carriers Inc. ("EUKOR") is a South Korean company. EUKOR has offices throughout the United States, including in Fort Lee, New Jersey, and has subsidiaries acting as its agents in the United States, including in New Jersey. EUKOR is a joint venture between Wallenius Lines AB, Wilh. Wilhelmsen ASA, and Hyundai Motor Company and Kia Motors Corporation. EUKOR shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. EUKOR also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

CSAV Defendants

71. Defendant Compania Sud Americana De Vapores, S.A. ("CSAV") is a Chilean company. CSAV has offices throughout the United States, including in Iselin, New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. CSAV shipped new, assembled motor vehicles to and from the United States including to and from this District, during the Class Period. CSAV – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

72. Defendant CSAV Agency North America, LLC ("CSAV North America") is a wholly owned subsidiary of CSAV and is a New Jersey limited liability company. It is headquartered in Iselin, New Jersey and acts as CSAV's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of CSAV, which controlled its policies, sales, and finances. CSAV North America is the exclusive maritime agent for Defendant CSAV in the United States. CSAV North America shipped new, assembled motor vehicles to and from the United States, including to and from this District, during the Class Period. CSAV North America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

AGENTS AND CO-CONSPIRATORS

73. Each Defendant acted as the principal of or agent for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein.

74. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as Defendants in this lawsuit, and individuals, the identities of which are presently unknown, have participated as co-conspirators with Defendants in the offenses alleged

in this Complaint, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

75. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's or limited liability entity's business or affairs.

FACTUAL ALLEGATIONS

A. The Vehicle Carrier Industry

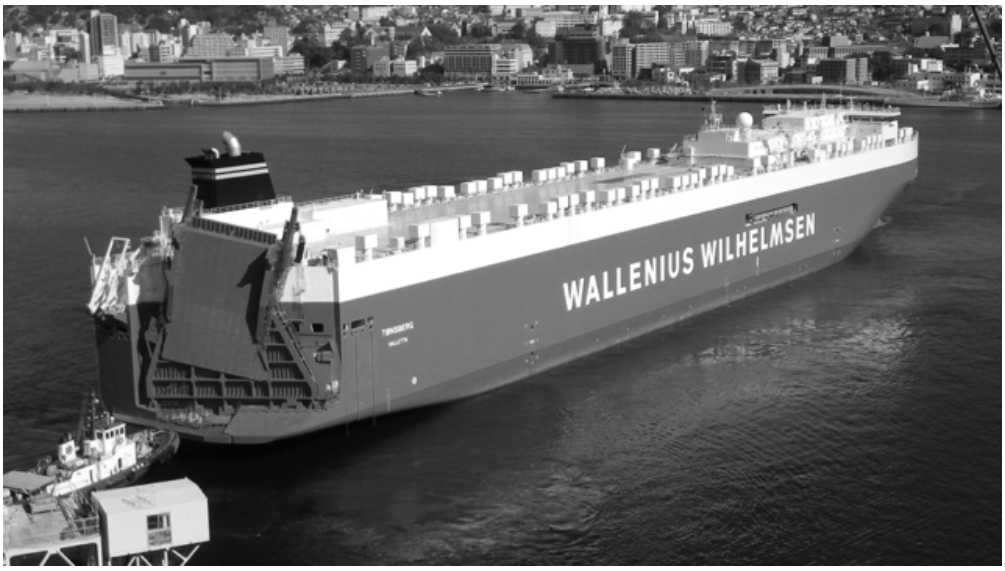
76. The ocean shipping industry is comprised of multiple sectors and multiple types of vessels, including bulk carriers, tankers, and vehicle carriers. Plaintiffs allege conduct in the Vehicle Carrier Services' industry. In addition to shipping new, assembled motor vehicles, Vehicle Carriers ship "high and heavy cargo"—cargo bigger and heavier than a vehicle and requiring special arrangements—and small, ancillary, non-moveable cargo, such as a plow blade for a plow truck.

77. The Vehicle Carriers industry consists of RoRo. (*See* Figure 1). RoRos are a special type of ocean vessel that allow new, assembled motor vehicles to be driven and parked on their decks for long voyages. These ships, also known as Vehicle Carriers, have special ramps to permit easy access, high sides to protect the cargo during transport, and numerous decks to allow storage of a large number and variety of new, assembled motor vehicles.

78. There are different types of RoRos. A Pure Vehicle Carrier ("PCC") can be thought of as a floating parking garage and transports only new, assembled motor vehicles. (*See* Figure 2). The layout is designed to purely carry new, assembled motor vehicles and is fixed.

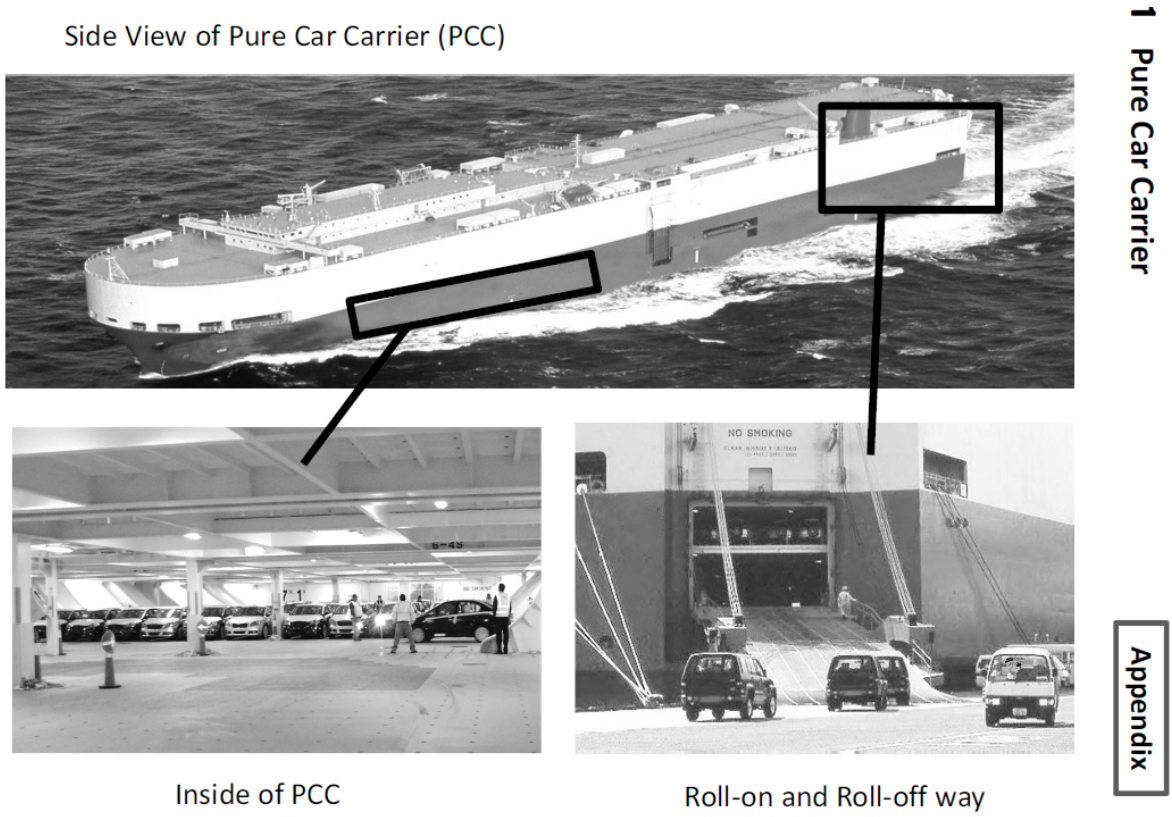
Generally, there are multiple levels of parking for new, assembled motor vehicles, and often the levels are moveable for high and heavy cargo. A Pure Car and Truck Carrier ("PCTC") transports cars, trucks, and other four wheeled new, assembled motor vehicles.

Figure 1



WW ASA's MV Tønsberg RoRo vessel

Figure 2



Source: http://www.jftc.go.jp/en/pressreleases/yearly-2014/March/140318.files/Appendix.pdf

79. In the Vehicle Carrier Services' market, there is a distinction between deep sea services and short sea services. Deep sea vessels are large and transport thousands of new, assembled motor vehicles or rolling equipment between continents. Short sea vessels are smaller and transport fewer new, assembled motor vehicles or rolling equipment over shorter distances. Short sea vessels can enter smaller ports and shallower waters.

80. The vast majority of demand for deep sea service relates to new, assembled motor vehicles. Consequently, the main ocean routes connect major vehicle manufacturing countries with major import markets for new, assembled motor vehicles. Different countries have several ports of call, and vessels generally sail in rotation visiting a sequence of ports.

81. Vehicle Carriers are a defined submarket of the larger bulk shipping market. World trade exploded after the proliferation of container ships. These ships allow a large range of goods, such as food and consumer electronics, to be packed in standard-sized containers for quick loading and delivery. However, cars, trucks, and heavy machinery, due to their larger and more irregular shapes, are not easily shipped in containers. Furthermore, there are no reasonable substitutes for the shipment of new, assembled motor vehicles by sea because any alternatives, such as air transportation, would be too costly.

82. Defendants and their co-conspirators provide Vehicle Carrier Services to original equipment manufacturers ("OEMs") – mostly large automotive, construction and agricultural manufacturers – whom purchase Vehicle Carrier Services directly from the Defendants.

83. Defendants engage in three different types of pricing negotiations with OEMs: (1) Bilateral negotiations whereby OEMs renew carriage contracts with Defendants; (2) Price reduction requests whereby OEMs request lower freight rates from Defendants; and (3) Tenders whereby multiple Defendants are invited to bid for a new or renewed contract award. Tenders involve an initial bid followed by a second round bid.

84. The contract period between a non-Japanese OEM and a Defendant Vehicle Carrier is typically two or three years. The contract period between a Japanese OEM and a Defendant Vehicle Carrier is typically one year.

85. In Japan, OEMs typically negotiate with an incumbent Vehicle Carrier when a contract expires, rather than engage in an open bidding, or tender process. Contracts are renewed in April of each year. Contract renewal negotiations often begin in December of the previous year.

86. American OEMs often rely on tenders to award business to a Defendant Vehicle Carrier.

87. Contracts, whether negotiated bilaterally or awarded by tender, generally cover global requirements, but rates are often negotiated for each individual route separately.

88. Contract freight rates for Vehicle Carrier Services are set on a per unit price. For instance, rates for new, assembled motor vehicles are typically set by a "per car" price. However, rates for "high and heavy cargo," are based on weight or cubic meter.

89. Defendants also charge surcharges in addition to rates for Vehicle Carrier Services. The primary surcharges are: (1) Bunker Adjustment Factor ("BAF"), which relates to fuel; and (2) Currency Adjustment Factor ("CAF"), which relates to the fluctuation of currency exchange rates.

90. Defendants and their co-conspirators provided Vehicle Carrier Services to OEMs for transportation of new, assembled motor vehicles to and from United States and elsewhere. Defendants and their co-conspirators provided Vehicle Carrier Services (a) in the United States for the transportation of new, assembled motor vehicles manufactured elsewhere for export to and sale in the United States, and (b) in other countries for the transportation of new, assembled motor vehicles manufactured elsewhere for export to and sale in the United States.

91. Plaintiffs and members of the proposed Classes purchased Vehicle Carrier Services indirectly from one or more of the Defendants by virtue of their purchase or lease of a new, assembled motor vehicle during the Class Period.

92. The annual market for Vehicle Carrier Services in the United States is nearly a billion dollars. Specifically, for the transportation of new, imported motor new, assembled

motor vehicles manufactured elsewhere for export to and sale in the United States, the market is between $600 and $800 million each year.

B. The Market Structure and Characteristics Support the Existence of a Conspiracy

93. The structure and other characteristics of the market for Vehicle Carrier Services are conducive to a price-fixing agreement and have made collusion particularly attractive. Specifically, the Vehicle Carrier Services market: (1) has high barriers to entry; (2) has inelasticity of demand; (3) is highly concentrated; (4) is highly homogenized; (5) is rife with opportunities to meet and conspire; and (6) has excess capacity.

1. The Market for Vehicle Carrier Services Has High Barriers to Entry

94. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supra-competitive pricing. When, however, there are significant barriers to entry, new entrants are much less likely to enter the market. Thus, barriers to entry help facilitate the formation and maintenance of a cartel.

95. There are substantial barriers that preclude, reduce, or make more difficult entry into the Vehicle Carrier Services market. Transporting new, assembled motor vehicles without damage across oceans requires highly specialized and sophisticated equipment, resources, and industry knowledge. The ships that make such transport possible are highly specialized. Such ships are purposely built to an unusual design that includes high sides, multiple interior decks, and no container cargo space. These characteristics restrict the use of the ships to the Vehicle Carrier Services market. A new entrant into the business would face costly and lengthy start-up costs, including multi-million dollar costs associated with manufacturing or acquiring a fleet of

Vehicle Carriers and other equipment, energy, transportation, distribution infrastructure and skilled labor. It is estimated that the capital cost of a RoRo is at least $95 million.[1]

96. Additionally, the nature of the Vehicle Carrier Services industry requires the establishment of a network of routes to serve a particular set of customers with whom Defendants establish long-term relationships. The existence of these established routes and long-term contracts increases switching costs for shippers and present an additional barrier to entry.

97. The Vehicle Carrier Services market also involves economies of scale and scope, which present additional barriers to entry.

(a) Economies of scale exist where firms can lower the average cost per unit through increased production, since fixed costs are shared over a larger number of units. Vehicle Carriers are less sensitive to fuel prices than other modes of transportation, providing opportunities to exploit economies of scale. As fuel prices increased in the last five to 10 years, market participants were incentivized to increase the average size of vessels. This reflects the presence of economies of scale, because fuel costs did not increase proportionally as vessel size grew.

(b) Economies of scope exist where firms achieve a cost advantage from providing a wide variety of products or services. The major Vehicle Carriers, including Defendants, own related shipping or transportation businesses they can utilize to provide additional services to clients, such as the operation of dedicated shipping terminals and inland transportation of new, assembled motor vehicles.

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[1] Asaf Ashar, *Marine Highways' New Direction*, J. OF COM. 38 (Nov. 21, 2011).

2. There is Inelastic Demand for Vehicle Carrier Services

98. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be "inelastic" if an increase in the price of a product results in only a small decline in the quantity sold of that product, if any. In other words, customers have nowhere to turn for alternative, cheaper products of similar quality, and so continue to purchase despite a price increase.

99. For a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales, revenues, and profits as customers purchased substitute products or declined to buy altogether. Inelastic demand is a market characteristic that facilitates collusion, allowing producers to raise their prices without triggering customer substitution and lost sales revenue.

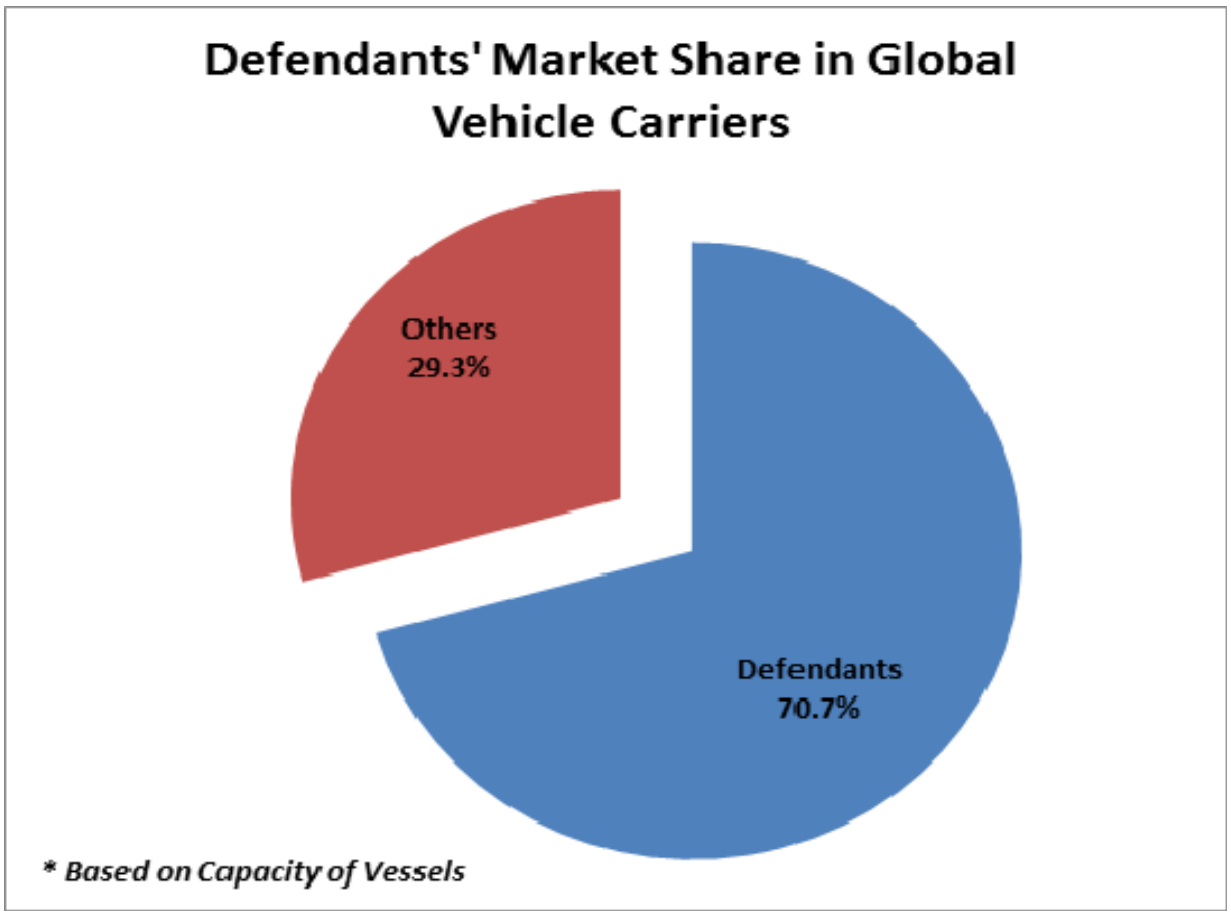
100. Demand for Vehicle Carrier Services is highly inelastic. This is because there are no close substitutes for this service. A Vehicle Carrier is the only ocean vessel that has the carrying capacity for a large number of new, assembled motor vehicles. A Vehicle Carrier is also more versatile than other substitutes because it is built to adjust to various shapes and sizes. Because a container ship functions based on the uniformity of the cargo—everything must fit within the standardized containers—it is not conducive to transporting larger and more irregularly-shaped goods, such as cars, trucks, and agricultural and construction equipment. Foreign OEMs must employ Vehicle Carrier Services to facilitate the sale of their new, assembled motor vehicles in North America, regardless of whether prices are kept at supra-competitive levels. There is simply no alternative for high volume transoceanic transportation of new, assembled motor vehicles to the United States.

3. The Market for Vehicle Carriers Is Highly Concentrated

101. A concentrated market is more susceptible to collusion and other anticompetitive practices.

102. The Defendants dominate the global Vehicle Carrier Services market. Defendants controlled over 70 percent of the Vehicle Carrier Services market during the Class Period. (*See* Figure 3).

Figure 3



Source: Hesnes Shipping AS, The Car Carrier Market 2010

4. The Services Provided by Vehicle Carriers Are Highly Homogeneous

103. Vehicle Carrier Services are a commodity-like service, which is interchangeable among Vehicle Carriers.

104. When products or services offered by different suppliers are viewed as interchangeable by purchasers, it is easier for suppliers to unlawfully agree on the price for the product or service in question, and it is easier to effectively police the collusively set prices. This makes it easier to form and sustain an unlawful cartel.

105. Vehicle Carrier Services are qualitatively the same across different carriers. Each Defendant has the capability to provide the same or similar Vehicle Carrier Services and Vehicle Carrier Service customers make purchase decisions based primarily on price. The core considerations for a purchaser will be where, when, and how much. This commoditization and interchangeability of Vehicle Carrier Services facilitated Defendants' conspiracy by making coordination on price much simpler than if Defendants had numerous distinct products or services with varying features.

5. Defendants Had Ample Opportunities to Meet and Conspire

106. Defendants attended industry events where they had the opportunity to meet, have improper discussions under the guise of legitimate business contacts, and perform acts necessary for the operation and furtherance of the conspiracy. For example, there are frequent trade shows for shipping companies around the globe, such as the Breakbulk conferences[2] and the biennial RoRos trade show in Europe.

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[2] Breakbulk Magazine provides its readers with project cargo, heavy lift and RoRo logistics intelligence including news, trending, data and metrics. Breakbulk Magazine's global events include Breakbulk Transportation Conferences & Exhibitions, which "are the largest international events focused on traditional breakbulk logistics, heavy-lift transportation and project cargo trade issues." The conferences provide opportunities to "meet with specialized cargo carriers, ports, terminals, freight forwarders, heavy equipment transportation companies and packers." Source: http://www.breakbulk.com/breakbulk-global-events/.

107. The shipping industry has been characterized as a small world where many of the key figures know each other. Among the key figures are NYK Line's president, Yasumi Kudo, MOL's president, Koichi Muto, and "K" Line's former president, Kenichi Kuroya.

108. Many employees of the Defendants have spent their entire careers in the shipping industry. In several instances, key employees have transferred between the Defendant companies. This is not unusual and is true of many industries. But in the shipping industry it fostered familiarity and connections between professed competitors and facilitated high-level coordination for the conspiracy. For example, Carl-Johan Hagman for the first eight years of his career worked for WWL, he then served as Chairman and CEO for EUKOR from at least 2003 through 2007, and in 2008 became the CEO of HAL AS.

109. Further, the very nature of the negotiations between Vehicle Carriers and OEMs also facilitates collusion among Vehicle Carriers. Soren Tousgaard Jensen, Managing Director of WWL Russia has explained, using Japan as an example,

> [T]he manufacturers there, in order to get the right frequency, the right market coverage and the right ports, have often called in two, three, sometimes four shipping lines around the table and said that they would spread their volumes between them, depending on how competitive they were. The shipping lines have to work together to find ways of not having ships in the same position and ways of having one line deliver at the beginning of the month and another mid-month.[3]

110. Defendants are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Defendants are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one

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[3] *Profitability the key issue for RoRo carriers*, AUTO. SUPPLY CHAIN (Oct. 4, 2012), *available at* http://www.automotivesupplychain.org/features/133/77/Profitability-the-key-issue-for-RoRo-carriers/

in Tokyo on March 2, 2010 that was led by Yasumi Kudo (of NYK Line) and attended by Eizo Murakami (of "K" Line), Junichiro Ikeda (of MOL), and Yasuo Tanaka (of NYK Line).

111. Defendants CSAV (through its subsidiary CSAV Group North America), NYK America, "K" Line America, MOL (through its subsidiary, MOL (America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

112. Defendants "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

113. Defendants "K" Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

114. Defendants CSAV, "K" Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

115. Defendants CSAV, "K" Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

116. Defendants NYK Line, "K" Line, and MOL are members of the Japan Shipowners' Association, a trade association based in Japan.

117. These associations—and the meetings, trade shows, and other industry events that stem from them—provided Defendants with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy.

118. Defendants routinely enter into vessel-sharing agreements whereby they reserve space on each other's ships. These sharing or chartering agreements are very common in the international maritime shipping industry.

119. A "space charter" occurs when a shipping carrier charters space on another shipping carrier's vessel. The opportunity for a space charter arises when a shipping carrier has less than full capacity on its ship and another shipping carrier needs additional capacity.

120. A "time charter" occurs when a shipping carrier fully charters another vehicle carrier's vessel. The opportunity for a time charter arises when a vehicle carrier would otherwise send a vessel home empty and another vehicle carrier needs space.

121. While ostensibly entered into to optimize utilization capacity and increase efficiency, such sharing and chartering agreements also provide opportunities for Defendants to discuss Vehicle Carrier Services market shares, routes, and rates and to engage in illegal conspiracies to fix prices, rig bids, and allocate customers and markets.

6. The Market for Vehicle Carrier Services Has Excess Capacity

122. Excess capacity occurs when a market is capable of supplying more of a product or service than is needed. This often means that demand is less than the output the market has the capability to produce. Academic literature suggests, and courts have found, that the presence of excess capacity can facilitate collusion.[4] Significantly, the market for Vehicle Carrier Services has operated in a state of excess capacity since 2008. The tables below demonstrate that while the capacity of Vehicle Carriers to transport new, assembled motor vehicles has increased since 2007, the utilization rate of Vehicle Carriers has fallen, and remained stable at a rate of approximately 83 percent since 2010. (*See* Figures 5 and 6).

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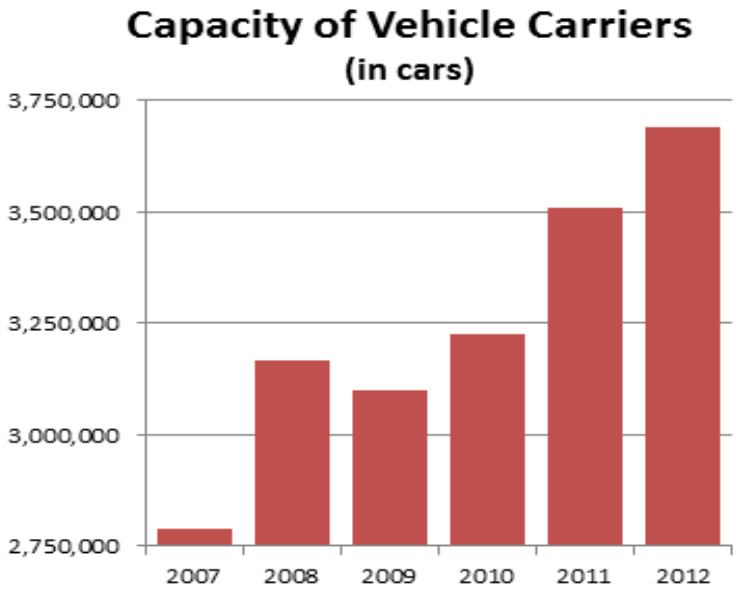
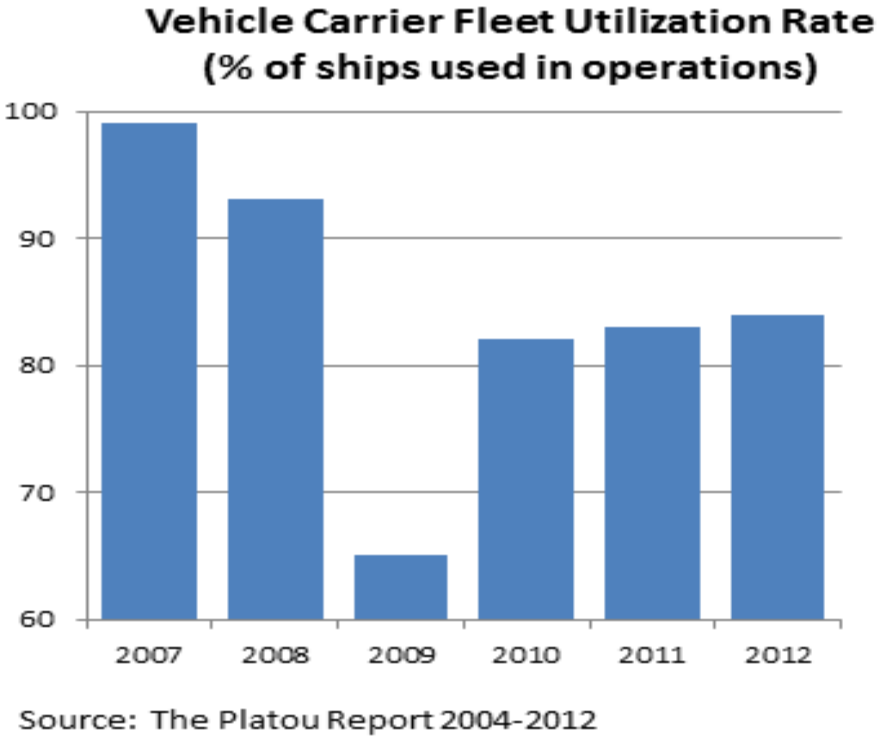
[4] *See* Benoit, J. and V. Krishna, *Dynamic Duopoly: Prices and Quantities*, REV. OF ECON. STUDIES, 54, 23-36 (1987); Davidson, Carl & Raymond Deneckere, *Excess Capacity and Collusion*, INT'L ECON. REV., 31(3), 521-41 (1990); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 657 (7th Cir. 2002)

Figure 4



Source: The Car Carrier Market, 2004-2012; Hesnes Shipping AS

Figure 5



123. In the face of such excess capacity, Defendants agreed to reduce capacity and increase prices through coordinated fleet reduction, also known as "scrapping" or "lay-ups." Scrapping involves taking a ship out of commission, and rendering the vessel non-usable. A "hot lay-up" involves taking a ship out of service while still retaining its crew to perform maintenance. A "cold lay-up" involves taking a vessel out of service and dismissing its crew. A ship that is "laid-up" may be re-commissioned; however, certain start-up costs are involved in order to do so. A cold lay-up requires higher start-up costs to re-commission a vessel than a hot lay-up.

124. Defendants' concerted, collusive efforts to reduce their fleets via scrapping and lay-ups decreased the availability of Vehicle Carrier Services in the market and caused prices to artificially rise during the Class Period.

C. Defendants Conspired To Fix Prices and Allocate Customers and Routes in the Vehicle Carrier Services Market

1. Defendants Agreed to Artificially Inflate Prices of Vehicle Carrier Services

Coordination of Price Increases

125. Defendants discussed pricing for Vehicle Carrier Services from as early as February 1997. Specifically, in February 1997, Defendants "K" Line, MOL, and NYK Line met several times in Tokyo to discuss Honda's upcoming contract renewal for the Japan to the United States route. Representatives included Messrs. Itage and Tanaka of "K" Line and Messrs. Hagino and Kawano of NYK Line, who were present at one or more of these meetings.

126. Generally, one Vehicle Carrier is the "lead" service provider for an OEM, such as Honda, though multiple Vehicle Carriers may provide services to an OEM. In 1997, MOL had an existing business relationship with Honda. In connection with Defendants' meeting in February 1997, "K" Line, MOL, and NYK Line agreed to separately request a price increase from Honda on the Japan to the United States route. Defendants also collectively agreed to specifically request a price increase for Honda Accords, which were manufactured in the United States at the time, on the United States to Japan route.

127. In 2002, Defendants "K" Line and MOL shared approximately 50 percent of Volkswagen's business on routes to the United States. In or around that same time, "K" Line and MOL agreed to seek a price increase of 3 to 5 percent from Volkswagen.

128. In late 2007, Volkswagen issued a tender for the Europe to the United States route. "K" Line and MOL discussed the tender and agreed to seek a price increase from Volkswagen.

129. In late 2007 or early 2008, executives from Defendants "K" Line, MOL, and NYK Line met on several occasions to discuss a 10 percent price increase for 2008 on the Japan to the United States route.

(a) In November 2007, Hiroyuki Fukumoto (General Manager of MOL's Car Carrier Division), and Mr. Kusnunose of NYK Line agreed to increase prices in 2008 and to persuade "K" Line to do the same.

(b) In December 2007, Toshitaka Shishido (Managing Executive Officer of MOL's Car Carrier Division) and Mr. Kato of NYK Line had a dinner meeting in Tokyo to discuss increased costs and the need for a corresponding collective price increase in 2008.

(c) On January 11, 2008, Messrs. Shishido and Kato had a lunch meeting, which included Mr. Murakami of "K" Line. At this January 11, 2008 lunch meeting, MOL, NYK Line, and "K" Line agreed that their objective would be at least a 5 percent price increase with a potential maximum increase of up to 7.25 percent. "K" Line, MOL, and NYK Line then had a follow-up meeting in which they discussed how to implement the coordinated price increases. They agreed that each Defendant would take the lead to increase prices with those OEMs with whom it had the strongest business relationship.

(d) On January 28, 2008, Messrs. Uchiyama of "K" Line, Fukumoto of MOL, and Kusnunose of NYK Line met to discuss the 2008 price increase further and agreed on a target increase of 10 percent. Messrs. Yamaguchi of "K" Line, Fukumoto, and Kusnunose then met the following month in furtherance of the agreement.

130. In November 2011, Höegh and MOL executives had a dinner meeting in which they discussed pricing for the United States to West Africa routes, which both Defendants serviced.

Coordination of Responses to Price Reduction Requests

131. In the fall of 2008, Messrs. Watanabe of MOL, Kurosawa of NYK, and Yokoyama of K Line communicated about price increases and price negotiations with Mitsubishi. They agreed on the price increase that each would seek from Mitsubishi.

132. In 2009, Mitsubishi requested a price reduction from "K" Line, MOL, and NYK Line equal to the aforementioned price increase in 2008 and retroactive application of this reduction. Defendants discussed Mitsubishi's request and collusively agreed to limit the amount of the price reduction and respond with identical reductions of 50 percent of the 2008 price increases.

133. In 2009, Suzuki sought a price reduction from MOL, NYK Line, and "K" Line. Mitsuoka Moriya (Manager of the Americas Team for MOL's Car Carrier Division), Mr. Shimizu of NYK, and Mr. Yokoyama of "K" Line met to discuss the request, and each company collusively agreed to limit the amount of the price reduction and reduce prices by the same amount. Similar collusive price reduction discussions occurred in 2010.

134. In September 2011, Toyota informed MOL that MOL's BAF and CAF surcharges were higher than its competitors and requested a price reduction. Mr. Watanbe, who became Manager of Americas Team for MOL's Car Carrier Division in 2011, discussed its pricing for Toyota with Mr. Kawamura of NYK Line and Mr. Fugimoto of "K" Line. MOL subsequently agreed to Toyota's request.

135. In 2012, Subaru sought a price reduction from MOL and NYK Line. Historically, NYK Line was the lead carrier service provider for Subaru. Mr. Watanbe of MOL and Mr. Karamura of NYK Line collusively agreed to limit the amount of their price reduction and bid their existing prices.

2. Defendants Conspired to Allocate Customers and Routes for Vehicle Carrier Services

136. In or around 2001, MOL and Höegh discussed American Honda business from the United States to the Middle East. MOL informed Höegh that while MOL was not the incumbent for this particular route, MOL wanted the business. Thus, MOL requested that Höegh refrain from bidding on the route, and in return, MOL promised to use certain of Höegh's vessels on the route if MOL was awarded the business. Höegh agreed, and MOL won the bid. As promised, MOL chartered Höegh vessels for the route.

137. In response to a tender issued by General Motors ("GM") in 2001 or 2002, MOL asked WWL not to submit a competitive bid out of "respect"[5] for MOL's incumbent business with GM. WWL agreed. MOL likewise asked NYK Line to submit a bid higher than MOL's and gave NYK a rate to bid. NYK Line agreed and submitted MOL's preferred bid.

138. In 2002 or 2003, MOL spoke with WWL about a Ford tender. WWL was the incumbent for Ford business from Europe to the United States, and MOL wanted to secure Ford's business from Thailand to the United States. WWL and MOL agreed not to compete with each other for the Ford business. WWL gave MOL a rate to bid on the Europe to the United States route, which MOL submitted. At the same time, MOL spoke with Höegh and Höegh

[5] Respect is a well-recognized term of art in Japanese business culture which, in this context, may either mean not bidding at all, or bidding a higher price.

agreed to not compete with MOL for Ford's business on the Thailand to the United States route, and MOL agreed to "respect" Höegh for Ford's business on routes from Africa to the Middle East.

139. In 2004, WWL agreed to "respect" MOL's Daimler and BMW businesses for the route from South Africa to the United States. In return, MOL agreed to "respect" WWL's portion of the Daimler and BMW business from Europe to the United States.

140. In the fall of 2008, Messrs. Watanabe of MOL, Kurosawa of NYK Line, and Yokoyama of K Line reach agreement regarding price increases each would request from Mitsubishi. The parties also agreed on the routes each would seek. NYK Line and "K" Line sought business to the West Coast of the United States, and the three companies shared Mitsubishi's East Coast business.

141. In 2008 or 2009, Mr. Ito of MOL asked Mr. Tsuji of "K" Line to "respect" its incumbent status for Chrysler business from the United States to South Africa. Specifically, MOL asked "K" Line to bid a higher rate. "K" Line agreed, and in return MOL agreed to "respect" "K" Line on routes from Brazil to the United States and Argentina.

142. In 2008 or 2009, MOL and WWL agreed to "respect," rather than compete, for each other's Daimler and BMW business. Specifically, WWL agreed not to compete for MOL's Daimler business from the Europe to the United States. In return, MOL agreed not to compete for WWL's BMW business from Europe to the United States.

143. In 2010, CSAV asked MOL to "respect" its GM business on routes from the United States to Columbia. MOL agreed and submitted a bid at a non-competitive price provided by CSAV. This tender covered business for the years 2010 to 2012.

144. In August 2011, MOL met with Mr. Suzuki of NYK Line regarding a two year tender on Mitsubishi FUSO trucks and buses from Japan to the United States. NYK Line was the lead Vehicle Carrier for the business, and coordinated arrangements with MOL and "K" Line by providing them with rates to bid. NYK Line, MOL, and "K" Line agreed that if someone failed to receive a portion of the business, NYK Line would tender cargo to that carrier. NYK Line, MOL, and "K" Line all received a portion of the business.

145. In February and/or March 2012, Messrs. Noguchi of MOL and Tsuneda of WWL met to discuss their companies' American Honda contracts. MOL and WWL agreed not to compete on certain routes from the United States to China and from the United States to Korea for American Honda. WWL gave MOL a price to bid on the United States-China route and retained that business with American Honda. In exchange, MOL gave WWL a price to bid on the United States-Korea route.

3. Defendants Conspired to Restrict Capacity for Vehicle Carrier Services

146. Defendants MOL, NYK Line, "K" Line, WWL, and/or Eukor also agreed to manipulate capacity and restrict the supply of Vehicle Carrier Services via fleet reductions.

147. From at least the late 1990s through 2002, Defendants MOL, "K" Line, NYK Line, Höegh and WWL executives met twice a year in Europe and Japan where fleet reductions via scrapping and lay-ups were discussed.

148. In or around 2008 or 2009, demand for Vehicle Carrier Services fell as result of the worldwide financial crisis. Thereafter, Toshitaka Shishido of MOL, Mr. Kato of NYK Line, and Mr. Murakami of "K" Line met to discuss fleet reductions. MOL, NYK Line, and "K" Line agreed to scrap vessels, and as general matter, they also discussed and agreed on the need to resist price reduction requests from OEMs. Messrs. Shishido, Euren of WWL and Hagman of

Höegh also spoke about the need for fleet reductions. MOL also had similar discussions with EUKOR. As a result of these agreements:

(a) MOL scrapped approximately 40 vessels;

(b) NYK Line scrapped approximately 40 vessels;

(c) "K" Line scrapped approximately 25 vessels;

(d) WWL engaged in cold lay-ups; and

(e) Höegh engaged in cold lay-ups.

D. Guilty Pleas in the Vehicle Carrier Services Industry

149. On February 27, 2014, the DOJ announced that Defendant CSAV agreed to pay a $8.9 million criminal fine and to plead guilty to a one-count criminal information charging it with engaging in a conspiracy to suppress and eliminate competition by allocating customers and routes, rigging bids and fixing prices for the sale of international ocean shipping services of roll-on, roll-off cargo to and from the United States and elsewhere, including the Port of Baltimore, from at least January 2000 to September 2012 in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

150. According to the Criminal Information filed, to form and carry out the Vehicle Carrier Services conspiracy, Defendant CSAV and its co-conspirators:

(a) attended meetings or otherwise engaged in communications regarding certain bids and tenders for international ocean shipping services for roll-on, roll-off cargo;

(b) agreed during those meetings and other communications to allocate customers by not competing for each other's existing business for certain customers on certain routes;

(c) agreed during those meetings and other communications not to compete against each other on certain tenders by refraining from bidding or by agreeing on the prices they would bid on those tenders;

(d) discussed and exchanged prices for certain customer tenders so as not to undercut each other's prices;

(e) submitted bids in accordance with the agreements reached; and

(f) provided international ocean shipping services for certain roll-on, roll-off cargo to and from the United States and elsewhere at collusive and non-competitive prices.

151. This is the first charge in an ongoing federal antitrust investigation into price-fixing, bid-rigging, and other anticompetitive conduct in the international ocean shipping industry conducted by the DOJ Antitrust Division's National Criminal Enforcement Section and the FBI's Baltimore Field Office, along with assistance from the United States Customs and Border Protection, Office of Internal Affairs, and Washington Field Office/Special Investigations Unit. Bill Baer, Assistant Attorney General in charge of the DOJ's Antitrust Division, stated, "Because of the growth in the automobile ocean shipping industry over the past 40 years, the conspiracy substantially affected interstate and foreign commerce. Prosecuting international price-fixing conspiracies remains a top priority for the division."

E. Government Fines in the Vehicle Carrier Services Industry

152. On March 19, 2014, the JFTC announced cease and desist orders and surcharge payment orders against four Defendants under Articles 7(2) and 7-2(1) of the Antimonopoly Act ("AMA") for price-fixing vehicle shipping services from at least as early as around mid-January 2008 until September 6, 2012. The JFTC fined Tokyo-based Defendants NYK Line $128.4

million, “K” Line $55.9 million, and NMCC $4.1 million. It also fined Norway’s WWL $34.3 million. (*See* Figure 7).

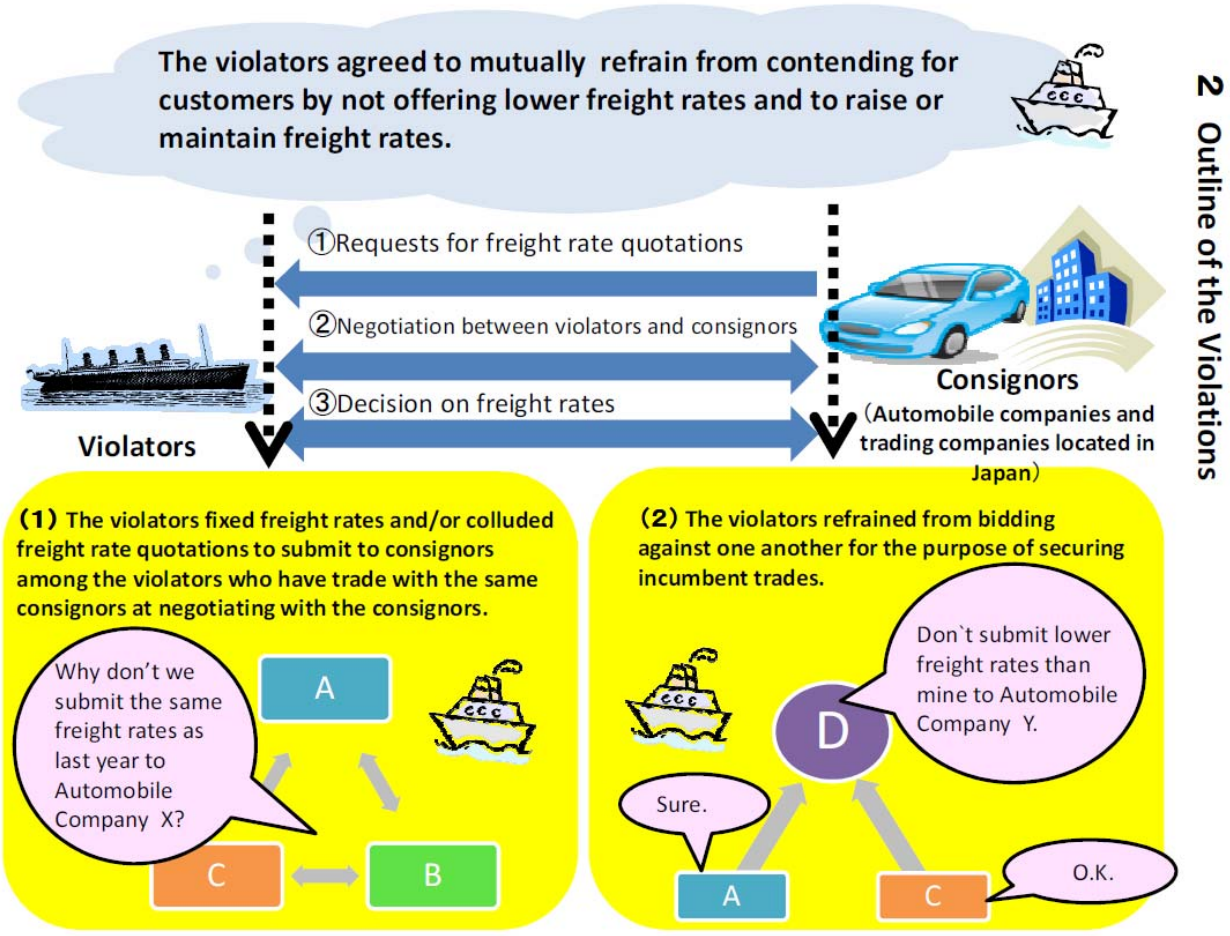
153. According to the JFTC, in accordance with the agreements, Defendants:

(a) fixed freight rates and/or colluded freight rate quotations to submit to consignors among the companies who have trade with the same consignors at negotiating with the consignors; and

(b) refrained from bidding against one another for the purpose of securing incumbent trades.

154. The JFTC found that NYK Line, “K” Line, WWL, and MOL price-fixed vehicle shipping services on the “North American route,” which is comprised of routes between ports in Japan and ports in the United States (including Puerto Rico), Canada, or Mexico. The JFTC investigated but did not fine MOL because MOL had stopped participating in the alleged conduct prior to a 2012 investigation of its offices and the JFTC granted its application for leniency.

Figure 6



155. The EC and CCB are also part of the antitrust probe in Vehicle Carrier Services. On September 6, 2012, EC officials carried out unannounced inspections at the premises of several vehicle carriers in several European Union member countries in coordination with the United States and Japanese competition authorities. The EC had reason to believe that the companies concerned may have violated Article 101 of the Treaty on the Functioning of the European Union, which prohibits cartels and restrictive business practices. On September 7, 2012, Defendant WWL confirmed that it had received requests for information from United States, Japan, European, and Canada competition authorities. WWL stated, "The purpose of

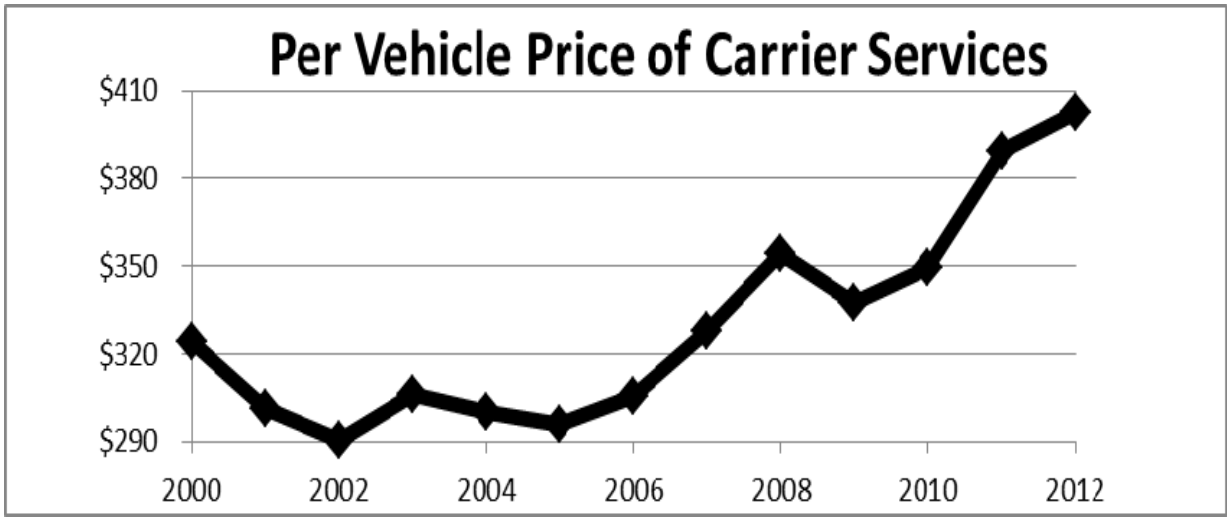
these requests is to ascertain whether there is evidence of any infringement of competition law related to possible price cooperation between carriers and allocation of customers."

F. Other Evidence of Collusion in the Vehicle Carrier Service Market

1. Defendants Raised Prices at a Rate that Far Exceeded Demand

156. Prices for Vehicle Carrier Services have been generally increasing since 2006.

Figure 7



157. As the graph above demonstrates, pricing for Vehicle Carrier Services (per vehicle) remained relatively flat from 2001 to 2006. In 2001, the per vehicle price was approximately $301.30, while in 2006 the per vehicle price was $305.79, an increase of less than 2 percent.

158. Beginning just prior to the Class Period, the price of Vehicle Carrier Services has increased by 23 percent.

159. The increase in the price of Vehicle Carrier Services far outpaced any increase in demand during the Class Period.

160. In the absence of an unlawful price-fixing conspiracy, according to the laws of supply and demand, prices would not increase at a rate greater than the rate of demand, yet that is exactly what happened in the Vehicle Carrier Services market during the Class Period.

2. Defendants Previously Colluded in Different Markets

161. The affiliates and subsidiaries of certain Defendants have recently pled guilty and agreed to pay millions of dollars in fines for violating the antitrust laws in other markets.

162. In 2007, the DOJ and EC launched an investigation into price fixing among international air freight forwarders, including certain affiliates and subsidiaries of Defendants. On October 10 of that year, the EC launched unannounced inspections at the premises of various international air freight forwarding companies with the help and coordination of various other nations' antitrust enforcement groups.

163. On March 19, 2009, the JFTC ordered 12 companies to pay $94.7 million in fines for violations of the Japanese Antimonopoly Act ("AMA"). Included among the 12 companies were "K" Line Logistics, Ltd., a subsidiary of Defendant "K" Line, Yusen Air & Sea Services Co., Ltd., a subsidiary of Defendant NYK Line, and MOL Logistics (Japan) Co., Ltd., a subsidiary of Defendant MOL.

164. The JFTC concluded that the companies had, over a five-year period, met and agreed to, among other things, the amount of fuel surcharges, security charges, and explosive inspection charges that they would charge their international air freight forwarding customers. The agreements were, according to the JFTC, negotiated at meetings of the Japan Air Cargo Forwarders Association.

165. Yusen Logistics Co., Ltd.[6] filed a complaint in April 2009 requesting a hearing to review the JFTC's orders, and the Tokyo High Court upheld the orders on November 9, 2012.

166. On September 30, 2011, MOL Logistics (Japan) Co., Ltd. pleaded guilty to a Criminal Information in the United States District Court for the District of Columbia charging it with Sherman Act violations related to price fixing. MOL is one of 16 companies that agreed to plead guilty or have pled guilty as a result of the DOJ's freight forwarding investigation, which has resulted in more than $120 million in criminal fines to date. According to the Criminal Information filed against MOL Logistics (Japan) Co. Ltd., it and its co-conspirators accomplished their conspiracy by:

(a) Participating in meetings, conversations, and communications to discuss certain components of freight forwarding service fees to be charged on air cargo shipments from Japan to the United States;

(b) Agreeing, during those meetings, conversations, and communications, on one or more components of the freight forwarding service fees to be charged on air cargo shipments from Japan to the United States;

(c) Levying freight forwarding service fees, and accepting payments for services provided for, air cargo shipments from Japan to the United States, in accordance with the agreements reached; and

(d) Engaging in meetings, conversations, and communications for the purpose of monitoring and enforcing adherence to the agreed-upon freight forwarding service fees.

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[6] On October 1, 2010, Yusen Air & Sea Services Co., Ltd. and NYK Logistics merged under the name Yusen Logistics Co., Ltd..

167. On March 28, 2012, the EC fined 14 international groups of companies, including Yusen Shenda Air & Sea Service (Shanghai) Ltd., a subsidiary of Defendant NYK Line, a total of $219 million for their participation in the air cargo cartels and violating European Union antitrust rules. According to the EC, "[i]n four distinct cartels, the cartelists established and coordinated four different surcharges and charging mechanisms, which are component elements of the final price billed to customers for these services."

168. On March 8, 2013, the DOJ announced that "K" Line Logistics, Ltd. and Yusen Logistics Co., Ltd., a subsidiary of Defendant NYK Line, agreed to pay criminal fines of $3,507,246 and $15,428,207, respectively, for their roles in a conspiracy to fix certain freight-forwarding fees for cargo shipped by air from the United States to Japan. As with MOL Logistics (Japan) Co. Ltd., "K" Line Logistics, Ltd. and Yusen Logistics Co., Ltd. pleaded guilty to meeting with co-conspirators, agreeing to what freight forwarding service fees should be charged on air cargo shipments, and actually levying those fees on its customers from about September 2002 until at least November 2007.

CLASS ACTION ALLEGATIONS

169. Plaintiffs brings this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the "Nationwide Class"):

> All persons and entities in the United States who indirectly purchased from any Defendant or any current or former subsidiary or affiliate thereof, or any co-conspirator, Vehicle Carrier Services for personal use and not for resale, incorporated into the price of a new Vehicle purchased or leased during the period from and including January 1, 2000 through such time as the anticompetitive effects of Defendants' conduct ceased.

170. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to the

common law of unjust enrichment and the state antitrust, unfair competition, and consumer protection laws of the states listed below (the "Plaintiffs' States") on behalf of the following class (the "Damages Class"):

> All persons and entities in the Plaintiffs' States who indirectly purchased, from any Defendant or any current or former subsidiary or affiliate thereof, or any co-conspirator, Vehicle Carrier Services for personal use and not for resale, incorporated into the price of a new Vehicle purchased or leased during the Class Period.

171. The Nationwide Class and the Damages Class are referred to herein as the "Classes." Excluded from the Classes are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Vehicle Carrier Services directly.

172. While Plaintiffs do not know the exact number of the members of the Classes, Plaintiffs believe there are (at least) thousands of members in each Class.

173. Common questions of law and fact exist as to all members of the Classes. This is particularly true given the nature of Defendants' conspiracy, which was generally applicable to all the members of both Classes, thereby making appropriate relief with respect to the Classes as a whole. Such questions of law and fact common to the Classes include, but are not limited to:

(a) Whether the Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain or stabilize the prices of Vehicle Carrier Services;

(b) The identity of the participants of the alleged conspiracy;

(c) The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

(d) Whether the alleged conspiracy violated the Sherman Act, as alleged in the First Count;

(e) Whether the alleged conspiracy violated state antitrust and unfair competition law, and/or state consumer protection law, as alleged in the Second and Third Counts;

(f) Whether the Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Classes, thereby entitling Plaintiffs and the members of the Classes to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Counts

(g) Whether the conduct of the Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the members of the Classes;

(h) The effect of the alleged conspiracy on the prices of Vehicle Carrier Services sold in the United States during the Class Period;

(i) Whether Plaintiffs and members of the Classes had any reason to know or suspect the conspiracy, or any means to discover the conspiracy;

(j) Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from the Plaintiffs and the members of the Classes;

(k) The appropriate injunctive and related equitable relief for the Nationwide Class; and

(l) The appropriate class-wide measure of damages for the Damages Class.

174. Plaintiffs' claims are typical of the claims of the members of the Classes, and Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all members of the Classes are similarly affected by Defendants' wrongful conduct in that they paid

artificially inflated prices for Vehicle Carrier Services purchased indirectly from the Defendants and/or their co-conspirators.

175. Plaintiffs' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

176. The questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

177. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that it might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

178. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

PLAINTIFFS AND THE CLASSES SUFFERED ANTITRUST INJURY

179. The Defendants' price-fixing conspiracy had the following effects, among others:

(a) Price competition has been restrained or eliminated with respect to Vehicle Carrier Services;

(b) The prices of Vehicle Carrier Services have been fixed, raised, maintained, or stabilized at artificially inflated levels;

(c) Indirect purchasers of Vehicle Carrier Services have been deprived of free and open competition; and

(d) Indirect purchasers of Vehicle Carrier Services paid artificially inflated prices.

180. During the Class Period, Plaintiffs and the members of the Classes paid supra-competitive prices for Vehicle Carrier Services. OEMs and automobile dealers passed on the inflated charges to purchasers and lessees of new, assembled motor vehicles. Those overcharges have unjustly enriched Defendants.

181. The market for Vehicle Carrier Services and the market for new, assembled motor vehicles are inextricably linked and intertwined because the market for Vehicle Carrier Services exists to serve the Vehicle market. Without the new, assembled motor vehicles, the Vehicle Carrier Services have little to no value because they have no independent utility. Indeed, the demand for new, assembled motor vehicles creates the demand for Vehicle Carrier Services.

182. While even a monopolist would increase its prices when the cost of its inputs increased, the economic necessity of passing through cost changes increases with the degree of competition a firm faces. The OEM and dealer markets for new, assembled motor vehicles are subject to vigorous price competition. The OEMs and dealers have thin net margins, and are therefore at the mercy of their input costs, such that increases in the price of Vehicle Carrier Services lead to corresponding increases in prices for new, assembled motor vehicles at the OEM and dealer levels. When downstream distribution markets are highly competitive, as they are in

the case of new, assembled motor vehicles shipped by Vehicle Carrier, overcharges are passed through to ultimate consumers, such as the indirect-purchaser Plaintiffs and the members of the Classes.

183. Hence, the inflated prices of Vehicle Carrier Services in new, assembled motor vehicles resulting from Defendants' price-fixing conspiracy have been passed on to Plaintiffs and the other members of the Classes by OEMs and dealers.

184. The purpose of the conspiratorial conduct of the Defendants and their co-conspirators was to raise, fix, rig or stabilize the price of Vehicle Carrier Services and, as a direct and foreseeable result, the price of new, assembled motor vehicles shipped by Vehicle Carriers.

185. Economists have developed techniques to isolate and understand the relationship between one "explanatory" variable and a "dependent" variable in those cases when changes in the dependent variable are explained by changes in a multitude of variables, even when all such variables may be changing simultaneously. That analysis — called regression analysis — is commonly used in the real world and in litigation to determine the impact of a price increase on one cost in a product (or service) that is an assemblage of costs.

186. Regression analysis is one potential method by which to isolate and identify only the impact of an increase in the price of Vehicle Carrier Services on prices for new purchased or leased new, assembled motor vehicles even though such products contain a number of other inputs whose prices may be changing over time. A regression model can explain how variation in the price of Vehicle Carrier Services affects changes in the price of new purchased or leased new, assembled motor vehicles. In such models, the price of Vehicle Carrier Services would be treated as an independent or explanatory variable. The model can isolate how changes in the

price of Vehicle Carrier Services impact the price of new, assembled motor vehicles shipped by Vehicle Carrier while controlling for the impact of other price-determining factors.

187. The precise amount of the overcharge impacting the prices of new, assembled motor vehicles shipped by Vehicle Carrier can be measured and quantified. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charge passed-through the chain of distribution. Thus, the economic harm to Plaintiffs and the members of the Classes can be quantified.

188. By reason of the alleged violations of the antitrust laws and other laws alleged herein, Plaintiffs and the members of the Classes have sustained injury to their businesses or property, having paid higher prices for Vehicle Carrier Services than they would have paid in the absence of the Defendants' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. The Statute of Limitations Did Not Begin to Run Because The Plaintiffs Did Not and Could Not Discover Their Claims

189. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

190. Plaintiffs and members of the Classes had no knowledge of the combination or conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until shortly before the filing of this Complaint. Plaintiffs and members of the Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until September 6, 2012, the date the JFTC announced raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

191. Plaintiffs and members of the Classes are consumers who had no direct contact or interaction with the Defendants, and had no means from which they could have discovered the combination and conspiracy described in this Complaint before the September 6, 2012 raids alleged above.

192. No information in the public domain was available to Plaintiffs and members of the Classes prior to the announced raids on September 6, 2012 that revealed sufficient information to suggest that the Defendants were involved in a criminal conspiracy to fix the prices charged for Vehicle Carrier Services. Plaintiffs and members of the Classes had no means of obtaining any facts or information concerning any aspect of Defendants' dealings with OEMs or other direct purchasers, much less the fact that they had engaged in the combination and conspiracy alleged herein.

193. For these reasons, the statute of limitations as to Plaintiffs and the Classes' claims did not begin to run, and has been tolled with respect to the claims that Plaintiffs and members of the Classes have alleged in this Complaint.

B. Fraudulent Concealment Tolled the Statute of Limitations

194. In the alternative, application of the doctrine of fraudulent concealment tolled the statute of limitations as to the claims asserted herein by Plaintiffs and the Classes. Plaintiffs and members of the Classes did not know and could not have known of the existence of the conspiracy and unlawful combination alleged herein until September 6, 2012, at the earliest, the date the JFTC announced raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

195. Because Defendants' agreements, understandings, and conspiracy were kept secret until September 6, 2012, Plaintiffs and members of the Classes were unaware before that

time of Defendants' unlawful conduct, and they did not know before then that they were paying supra-competitive prices for Vehicle Carrier Services throughout the United States during the Class Period. No information, actual or constructive, was ever made available to Plaintiffs and members of the Classes that even hinted to Plaintiffs and the members of the Classes that they were being injured by Defendants' unlawful conduct.

196. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

197. By its very nature, the Defendants' anticompetitive conspiracy and unlawful combinations were inherently self-concealing. Defendants met and communicated in secret and agreed to keep the facts about their collusive conduct from being discovered by any member of the public or by the OEMs and other direct purchasers with whom they did business.

198. Plaintiffs and members of the Classes could not have discovered the alleged combination or conspiracy at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their conduct.

199. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiffs and members of the Classes had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed, until September 6, 2012, when the JFTC announced raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

200. For these reasons, the statute of limitations applicable to Plaintiffs' and the Classes' claims was tolled and did not begin to run until September 6, 2012.

FIRST COUNT
Violation of Section 1 of the Sherman Act
(on behalf of Plaintiffs and the Nationwide Class)

201. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

202. Defendants and unnamed conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

203. The acts done by each of the Defendants as part of, and in furtherance of, their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

204. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding and conspiracy in restraint of trade to artificially fix, raise, stabilize, and control prices for Vehicle Carrier Services, thereby creating anticompetitive effects.

205. The anticompetitive acts were intentionally directed at the United States market for Vehicle Carrier Services and had a substantial and foreseeable effect on interstate commerce by raising and fixing prices for Vehicle Carrier Services throughout the United States.

206. The conspiratorial acts and combinations have caused unreasonable restraints in the market for Vehicle Carrier Services.

207. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased Vehicle Carrier Services

have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

208. In formulating and carrying out the alleged agreement, understanding and conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices and course of conduct set forth herein.

209. Defendants' conspiracy had the following effects, among others:

(a) Price competition in the market for Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the United States;

(b) Prices for Vehicle Carrier Services provided by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive levels throughout the United States; and

(c) Plaintiffs and members of the Nationwide Class who purchased Vehicle Carrier Services indirectly from Defendants and their co-conspirators have been deprived of the benefits of free and open competition.

210. Plaintiffs and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for Vehicle Carrier Services purchased indirectly from Defendants and the co-conspirators than they would have paid and will pay in the absence of the conspiracy.

211. The alleged contract, combination, or conspiracy is a *per se* violation of the federal antitrust laws.

212. Plaintiffs and members of the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

SECOND COUNT
Violation of State Antitrust Statutes
(on behalf of Plaintiffs and the Damages Class)

213. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

214. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy with respect to the provision of Vehicle Carrier Services in unreasonable restraint of trade and commerce and in violation of the various state antitrust and other statutes set forth below.

215. The contract, combination, or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain at artificially supra-competitive prices for Vehicle Carrier Services and to allocate customers for Vehicle Carrier Services in the United States.

216. In formulating and effectuating this conspiracy, Defendants and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

(a) participating in meetings and conversations among themselves in the United States and elsewhere during which they agreed to price Vehicle Carrier Services at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid by Plaintiffs and members of the Damages Class with respect to Vehicle Carrier Services provided in the United States;

(b) allocating customers and markets for Vehicle Carrier Services provided in the United States in furtherance of their agreements; and

(c) participating in meetings and conversations among themselves in the United States and elsewhere to implement, adhere to, and police the unlawful agreements they reached.

217. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, increase, maintain, or stabilize prices and to allocate customers with respect to Vehicle Carrier Services.

218. Defendants' anticompetitive acts described above were knowing, willful and constitute violations or flagrant violations of the following state antitrust statutes.

219. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Arizona; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce.

(c) As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants entered into agreements in restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

220. Defendants have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq*.

(a) During the Class Period, Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Section 16720, California Business and Professions Code. Defendants, and each of them, have acted in violation of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, Vehicle Carrier Services at supra-competitive levels.

(b) The aforesaid violations of Section 16720, California Business and Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and to allocate markets for, Vehicle Carrier Services.

(c) For the purpose of forming and effectuating the unlawful trust, the Defendants and their co-conspirators have done those things which they combined and conspired to do, including but not limited to the acts, practices and course of conduct set forth above and the following: (1) Fixing, raising, stabilizing, and pegging the price of Vehicle Carrier Services; and (2) Allocating among themselves the provision of Vehicle Carrier Services.

(d) The combination and conspiracy alleged herein has had, inter alia, the following effects: (1) Price competition in the provision of Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the State of California; (2) Prices for Vehicle Carrier Services provided by Defendants and their co-conspirators have been fixed,

raised, stabilized, and pegged at artificially high, non-competitive levels in the State of California and throughout the United States; and (3) Those who purchased Vehicle Carrier Services directly or indirectly from Defendants and their co-conspirators have been deprived of the benefit of free and open competition.

(e) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property in that they paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a result of Defendants' violation of Section 16720 of the California Business and Professions Code, Plaintiffs and members of the Damages Class seek treble damages and their cost of suit, including a reasonable attorney's fee, pursuant to Section 16750(a) of the California Business and Professions Code.

221. Defendants have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Code Annotated §§ 28-4501, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased new, assembled motor vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in the District of Columbia; and (4) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia

and/or purchased new, assembled motor vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in the District of Columbia.

(b) During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce.

(c) As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

222. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq*.

223. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Shipping Services.

224. During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce.

225. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

226. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Hawaii Revised Statutes Annotated §§ 480-4, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Hawaii Revised Statutes Annotated §§ 480-4, *et seq*.

227. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Illinois Antitrust Act, 740 Illinois Compiled Statutes 10/1, *et seq.*

228. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier price competition was restrained, suppressed, and eliminated throughout Illinois; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Illinois; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Shipping Services.

229. During the Class Period, Defendants' illegal conduct substantially affected Illinois commerce.

230. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

231. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code §§ 553.1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Iowa; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Iowa commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Iowa Code §§ 553.1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Iowa Code §§ 553.1, *et seq.*.

232. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Kansas; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the

Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Kansas commerce.

(c) As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

233. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Maine; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Maine commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

234. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Michigan Compiled Laws Annotated §§ 445.771, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Michigan; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Michigan; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Michigan commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq*. Accordingly,

Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp. Laws Ann. §§ 445.771, *et seq*.

235. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Minnesota Annotated Statutes §§ 325D.49, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Minnesota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Minnesota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Minnesota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq*.

236. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Mississippi Code Annotated §§ 75-21-1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Mississippi; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Mississippi; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Mississippi commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq.*

237. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nebraska Revised Statutes §§ 59-801, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nebraska; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and

members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Nebraska commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq.*

238. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Nevada; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Nevada commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

239. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes §§ 356:1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Hampshire; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected New Hampshire commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.* Accordingly,

Plaintiffs and members of the Damages Class seek all relief available under New Hampshire Revised Statutes §§ 356:1, *et seq*.

240. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Mexico Statutes Annotated §§ 57-1-1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, *et seq*.

241. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws §§ 340, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New York; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services when they purchased new, assembled motor vehicles transported by Vehicle Carrier Services, or purchased products that were otherwise of lower quality, than would have been absent the Defendants' illegal acts, or were unable to purchase products that they would have otherwise have purchased absent the illegal conduct.

(b) During the Class Period, Defendants' illegal conduct substantially affected New York commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq*. The conduct set forth above is a *per se* violation of the Act. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New York Gen. Bus. Law §§ 340, *et seq*.

242. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes §§ 75-1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected North Carolina commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Carolina Gen. Stat. §§ 75-1, *et. seq*.

243. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Dakota Century Code §§ 51-08.1-01, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout North Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and

members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on North Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Dakota Cent. Code §§ 51-08.1-01, *et seq*.

244. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Oregon Revised Statutes §§ 646.705, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Oregon; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Oregon commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq*.

245. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws §§ 37-1-3.1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout South Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq*. Accordingly,

Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et seq*.

246. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Tennessee Code Annotated §§ 47-25-101, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Tennessee; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Tennessee; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Tennessee commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Tennessee Code Ann. §§ 47-25-101, *et seq*.

247. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated §§ 76-10-911, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Utah; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Utah commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Utah Code Annotated §§ 76-10-911, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Utah Code Annotated §§ 76-10-911, *et seq*.

248. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Vermont Stat. Ann. 9 §§ 2453, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and

members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Vermont commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Vermont Stat. Ann. 9 §§ 2453, *et seq*.

249. Defendants have entered into an unlawful agreement in restraint of trade in violation of the West Virginia Code §§ 47-18-1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout West Virginia; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout West Virginia; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on West Virginia commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of West Virginia Code §§ 47-18-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under West Virginia Code §§ 47-18-1, *et seq*.

250. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Wisconsin Statutes §§ 133.01, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Wisconsin; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Wisconsin; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Wisconsin commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq*. Accordingly, Plaintiffs and

members of the Damages Class seek all relief available under Wisconsin Stat. §§ 133.01, *et seq*.

251. Plaintiffs and members of the Damages Class in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy and agreement. Plaintiffs and members of the Damages Class have paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

252. In addition, Defendants have profited significantly from the aforesaid conspiracy. Defendants' profits derived from their anticompetitive conduct come at the expense and detriment of members of the Plaintiffs and the members of the Damages Class.

253. Accordingly, Plaintiffs and the members of the Damages Class in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

THIRD COUNT
Violation of State Consumer Protection Statutes
(on behalf of Plaintiffs and the Damages Class)

254. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

255. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

256. Defendants have knowingly entered into an unlawful agreement in restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101, *et. seq*.

257. Defendants knowingly agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Arkansas and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

258. The aforementioned conduct on the part of the Defendants constituted "unconscionable" and "deceptive" acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10).

259. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Arkansas; (2) p Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Arkansas; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Carrier Services.

260. During the Class Period, Defendants' illegal conduct substantially affected Arkansas commerce and consumers.

261. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

262. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

263. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of California Business and Professions Code § 17200, *et seq*.

(a) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in California, and committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above.

(b) This claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged herein, that violated Section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Law.

(c) The Defendants' conduct as alleged herein violated Section 17200. The acts, omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set forth above; (2) the violations of Section 16720, *et seq.*, of the California Business and Professions Code, set forth above;

(d) Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as described above, whether or not in violation of Section 16720, *et seq*., of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent;

(e) Defendants' acts or practices are unfair to purchasers of Vehicle Carrier Services (or new, assembled motor vehicles transported by them) in the State of California within the meaning of Section 17200, California Business and Professions Code; and

(f) Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

(g) Plaintiffs and members of the Damages Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business acts or practices.

(h) The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

(i) The unlawful and unfair business practices of Defendants, and each of them, as described above, have caused and continue to cause Plaintiffs and the members of the Damages Class to pay supra-competitive and artificially-inflated prices for Vehicle Carrier Services (or new, assembled motor vehicles transported by them). Plaintiffs and the members of the Damages Class suffered injury in fact and lost money or property as a result of such unfair competition.

(j) The conduct of Defendants as alleged in this Complaint violates Section 17200 of the California Business and Professions Code.

(k) As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs and the members of the Damages Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a

result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

264. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in the District of Columbia

(b) The foregoing conduct constitutes "unlawful trade practices," within the meaning of D.C. Code § 28-3904. Plaintiffs were not aware of Defendants' price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for Vehicle Carrier Services. Defendants had the sole power to set that price and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing Vehicle Carrier Services because they were unaware of the unlawful overcharge and there was no alternative source of supply through which Plaintiffs could avoid the overcharges. Defendants' conduct with regard to sales of Vehicle Carrier Services, including their illegal conspiracy to secretly fix the price of Vehicle Carrier Services at supra-competitive levels and overcharge consumers, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs. The suppression of competition that has resulted from Defendants' conspiracy has ultimately resulted in

unconscionably higher prices for purchasers so that there was a gross disparity between the price paid and the value received for Vehicle Carrier Services.

(c) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(d) As a direct and proximate result of the Defendants' conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

265. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq*.

(a) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Florida; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Florida; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the

Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Florida commerce and consumers.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Florida Stat. § 501.201, *et seq*., and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

266. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq*.

(a) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce and consumers.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Hawaii Rev. Stat. § 480, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

267. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Massachusetts Gen. Laws, Ch 93A, § 1 et seq.

268. Defendants were engaged in trade or commerce as defined by G.L. 93A. Defendants, in a market that includes Massachusetts, agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Massachusetts and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

269. The aforementioned conduct on the part of the Defendants constituted "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce," in violation of Massachusetts Gen. Laws, Ch 93A, § 2, 11.

270. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Massachusetts; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Shipping Services.

271. During the Class Period, Defendants' illegal conduct substantially affected Massachusetts commerce and consumers.

272. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

273. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Massachusetts Gen. Laws, Ch 93A, §§ 2, 11, that were knowing or willful, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute, including multiple damages.

274. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et. seq.*

(a) Missouri Plaintiffs and members of this Damages Class purchased Vehicle Carrier Services for personal, family, or household purposes.

(b) Defendants engaged in the conduct described herein in connection with the sale of Vehicle Carrier Services in trade or commerce in a market that includes Missouri.

(c) Defendants agreed to, and did in fact affect, fix, control, and/or maintain, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Missouri, which conduct constituted unfair practices in that it was unlawful under federal and state law, violated public policy, was unethical, oppressive and unscrupulous, and caused substantial injury to Plaintiffs and members of the Damages Class.

(d) Defendants concealed, suppressed, and omitted to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Vehicle Carrier Services. The concealed, suppressed,

and omitted facts would have been important to Plaintiffs and members of the Damages Class as they related to the cost of Vehicle Carrier Services they purchased.

(e) Defendants misrepresented the real cause of price increases and/or the absence of price reductions in Vehicle Carrier Services by making public statements that were not in accord with the facts.

(f) Defendants' statements and conduct concerning the price of Vehicle Carrier Services were deceptive as they had the tendency or capacity to mislead Plaintiffs and members of the Damages Class to believe that they were purchasing Vehicle Carrier Services at prices established by a free and fair market.

(g) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Missouri; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Missouri; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(h) The foregoing acts and practices constituted unlawful practices in violation of the Missouri Merchandising Practices Act.

(i) As a direct and proximate result of the above-described unlawful practices, Plaintiffs and members of the Damages Class suffered ascertainable loss of money or property.

(j) Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. §

407.020, which prohibits "the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce…," as further interpreted by the Missouri Code of State Regulations, 15 CSR 60-7.010, *et seq.*, 15 CSR 60-8.010, *et seq.*, and 15 CSR 60-9.010, *et seq.*, and Mo. Rev. Stat. § 407.025, which provides for the relief sought in this count.

275. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-103, *et seq.*, and §§ 30-14-201, *et. seq.*

(a) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Montana; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in Montana, and Defendants' illegal conduct substantially affected Montana commerce and consumers.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code, §§ 30-14-103, *et seq*., and §§ 30-14-201, *et. seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

276. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq*.

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) The aforementioned conduct on the part of the Defendants constituted "unconscionable trade practices," in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, inter alia, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for Vehicle Carrier Services as set forth in N.M.S.A., § 57-12-2E. Plaintiffs were not aware of Defendants' price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for Vehicle Carrier Services. Defendants had the sole power to set that price and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing Vehicle Carrier Services because they were unaware of the unlawful overcharge and there was no alternative source of supply through which Plaintiffs could avoid the overcharges.

Defendants' conduct with regard to sales of Vehicle Carrier Services, including their illegal conspiracy to secretly fix the price of Vehicle Carrier Services at supra-competitive levels and overcharge consumers, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs. The suppression of competition that has resulted from Defendants' conspiracy has ultimately resulted in unconscionably higher prices for consumers so that there was a gross disparity between the price paid and the value received for Vehicle Carrier Services.

(c) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(d) During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce and consumers.

(e) As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured and are threatened with further injury.

(f) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

277. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

(a) Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in New York and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) Defendants and their co-conspirators made public statements about the prices of Vehicle Carrier Services that either omitted material information that rendered the statements that they made materially misleading or affirmatively misrepresented the real cause of price increases for Vehicle Carrier Services; and Defendants alone possessed material information that was relevant to consumers, but failed to provide the information.

(c) Because of Defendants' unlawful trade practices in the State of New York, New York consumer class members who indirectly purchased Vehicle Carrier Services were misled to believe that they were paying a fair price for Vehicle Carrier Services or the price increases for Vehicle Carrier Services were for valid business reasons; and similarly situated consumers were potentially affected by Defendants' conspiracy.

(d) Defendants knew that their unlawful trade practices with respect to pricing Vehicle Carrier Services would have an impact on New York consumers and not just the Defendants' direct customers.

(e) Defendants knew that their unlawful trade practices with respect to pricing Vehicle Carrier Services would have a broad impact, causing consumer class members

who indirectly purchased Vehicle Carrier Services to be injured by paying more for Vehicle Carrier Services than they would have paid in the absence of Defendants' unlawful trade acts and practices.

(f) The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner.

(g) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New York; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(h) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in New York, and Defendants' illegal conduct substantially affected New York commerce and consumers.

(i) During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed Vehicle Carrier Services in New York.

(j) Plaintiffs and members of the Damages Class seek all relief available pursuant to N.Y. Gen. Bus. Law § 349 (h).

278. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq*.

(a) Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in North Carolina and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) Defendants' price-fixing conspiracy could not have succeeded absent deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation, implementation and maintenance of Defendants' price-fixing conspiracy. Defendants committed inherently deceptive and self-concealing actions, of which Plaintiffs could not possibly have been aware. Defendants and their co-conspirators publicly provided pre-textual and false justifications regarding their price increases. Defendants' public statements concerning the price of Vehicle Carrier Services created the illusion of competitive pricing controlled by market forces rather than supra-competitive pricing driven by Defendants' illegal conspiracy. Moreover, Defendants deceptively concealed their unlawful activities by mutually agreeing not to divulge the existence of the conspiracy to outsiders.

(c) The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of North Carolina consumers in an honest marketplace in which economic activity is conducted in a competitive manner.

(d) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(e) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in North Carolina, and Defendants' illegal conduct substantially affected North Carolina commerce and consumers.

(f) During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed Vehicle Carrier Services in North Carolina.

(g) Plaintiffs and members of the Damages Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, et seq., and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

279. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Rhode Island Unfair Trade Practice and Consumer Protection Act, R.I. Gen. Laws §§ 6-13.1-1, *et seq.*

(a) Members of this Damages Class purchased Vehicle Carrier Services for personal, family, or household purposes.

(b) Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Rhode Island, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Rhode Island.

(c) Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Vehicle Carrier Services. Defendants owed a duty to disclose such facts, and considering the relative lack of sophistication of the average, non-business purchaser, Defendants breached that duty by their silence. Defendants misrepresented to all purchasers during the Class Period that Defendants' Vehicle Carrier Services prices were competitive and fair.

(d) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Rhode Island; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Rhode Island; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(e) As a direct and proximate result of the Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive

commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.

(f) Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of Vehicle Carrier Services, likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing Vehicle Carrier Services at prices set by a free and fair market. Defendants' affirmative misrepresentations and omissions constitute information important to Plaintiffs and members of the Damages Class as they related to the cost of Vehicle Carrier Services they purchased.

(g) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Rhode Island Gen. Laws. § 6-13.1-1, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

280. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, et seq.

281. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout South Carolina; (2) Vehicle Shipping Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Carrier Services.

282. During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce.

283. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

284. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Ann. §§ 39-5-10, et seq., and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

285. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Vermont.

(b) Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Vehicle Carrier Services. Defendants owed a duty to disclose such facts, and considering the relative lack of sophistication of the average, non-business purchaser, Defendants breached that duty by their silence. Defendants misrepresented to all purchasers during the Class Period that Defendants' Vehicle Carrier Services prices were competitive and fair.

(c) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of

the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(d) As a direct and proximate result of the Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.

(e) Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of Vehicle Carrier Services, likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing Vehicle Carrier Services at prices set by a free and fair market. Defendants' misleading conduct and unconscionable activities constitutes unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

FOURTH COUNT
Unjust Enrichment
(on behalf of Plaintiffs and the Damages Class)

286. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

287. As a result of their unlawful conduct described above, Defendants have and will continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on Vehicle Carrier Services.

288. Defendants have benefited from their unlawful acts and it would be inequitable for Defendants to be permitted to retain any of the ill-gotten gains resulting from the

overpayments made by Plaintiffs and the members of the Damages Class for Vehicle Carrier Services.

289. Plaintiffs and the members of the Damages Class are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct. Plaintiffs and the members of the Damages Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and the members of the Damages Class may make claims on a pro rata basis

WHEREFORE, Plaintiffs demand judgment that:

1. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Classes;

2. That the unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

(a) An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

(b) A *per se* violation of Section 1 of the Sherman Act;

(c) An unlawful combination, trust, agreement, understanding and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and

(d) Acts of unjust enrichment by Defendants as set forth herein.

3. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of

Plaintiffs and the members of the Damages Class be entered against Defendants in an amount to be trebled to the extent such laws permit;

4. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully gained from them;

5. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

6. Plaintiffs and the members of the Damages Class be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment;

7. Plaintiffs and the members of the Classes be awarded pre- and post- judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this Complaint;

8. Plaintiffs and the members of the Classes recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

9. Plaintiffs and members of the Classes have such other and further relief as the case may require and the Court may deem just and proper.

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OLSTEIN, BORDY & AGNELLO, P.C.
Liaison Counsel for End-Payor Plaintiffs

BY: /s/James E. Cecchi
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Dated: June 2, 2014

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JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

CARELLA, BYRNE, CECCHI
OLSTEIN, BORDY & AGNELLO, P.C.
Liaison Counsel for End-Payor Plaintiffs

BY: /s/James E. Cecchi
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In Re: Vehicle Carrier Services Antitrust Litigation	Master Docket No.: 13-cv-3306 (MDL No. 2471)
Rush Truck Centers of Arizona, Inc.; Rush Truck Centers of California, Inc.; Rush Truck Centers of Colorado, Inc.; Rush Truck Centers of Florida, Inc.; Rush Truck Centers of Georgia, Inc.; Rush Truck Centers of Idaho, Inc.; Rush Truck Centers of Kansas, Inc.; Rush Truck Centers of North Carolina, Inc.; Rush Truck Centers of Ohio, Inc.; Rush Truck Centers of Oklahoma, Inc.; Rush Truck Centers of Texas, LP.; Rush Truck Centers of Utah, Inc., *on behalf of themselves and all others similarly situated,* Plaintiffs, v. Nippon Yusen Kabushiki Kaisha; NYK Line (North America) Inc.; Mitsui O.S.K. Lines Ltd.; Mitsui O.S.K. Bulk Shipping (USA), Inc.; World Logistics Service (USA) Inc.; Höugh Autoliners AS; Kawasaki Kisen Kaisha Ltd.; "K" Line America, Inc.; Wallenius Wilhelmsen Logistics AS; Wallenius Wilhelmsen Logistics Americas LLC; EUKOR Car Carriers Inc; Compañia Sud Americana de Vapores S.A.; and CSAV Agency North America, LLC; Defendants.	No. **CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF** **JURY TRIAL DEMANDED**

TABLE OF CONTENTS

PLAINTIFFS Rush Truck Centers of Arizona, Inc. ("Rush AZ"), Rush Truck Centers of California, Inc. ("Rush CA"), Rush Truck Centers of Colorado, Inc. ("Rush CO"), Rush Truck Centers of Florida, Inc. ("Rush FL"), Rush Truck Centers of Georgia, Inc. ("Rush GA"), Rush Truck Centers of Idaho, Inc. ("Rush ID"), Rush Truck Centers of Kansas, Inc. ("Rush KS"), Rush Truck Centers of North Carolina, Inc. ("Rush NC"), Rush Truck Centers of Ohio, Inc. ("Rush OH"), Rush Truck Centers of Oklahoma, Inc. ("Rush OK"), Rush Truck Centers of Texas, LP. ("Rush TX"), Rush Truck Centers of Utah, Inc. ("Rush UT"), (collectively "Plaintiffs") file this Class Action Complaint and Demand for Jury Trial and Injunctive Relief on behalf of themselves and all other similarly situated dealers of medium- and heavy-duty trucks, commercial vehicles, construction equipment, mining equipment, agricultural equipment, and other similar vehicles (the "Classes" as defined below).

Plaintiffs bring this class action for damages, injunctive relief, and other relief pursuant to federal antitrust laws; state antitrust, unfair competition, and consumer protection laws; and the common law of unjust enrichment; demand a trial by jury; and allege as follows:

I. NATURE OF ACTION

1. Plaintiffs bring this lawsuit as a proposed class action against Defendants Nippon Yusen Kabushiki Kaisha ("NYK"); NYK Line (North America) Inc. ("NYK America"); Mitsui O.S.K. Lines Ltd. ("MOL"); Mitsui O.S.K. Bulk Shipping (USA), Inc. ("MOL USA"); World Logistics Service (USA) Inc. ("WLS"); Höugh Autoliners AS ("Höegh"); Kawasaki Kisen Kaisha Ltd. ("K Line"); "K" Line America, Inc. (""K" Line America"); Wallenius Wilhelmsen Logistics AS ("WWL"); Wallenius Wilhelmsen Logistics Americas LLC ("WWL Americas"); EUKOR Car Carriers Inc. ("EUKOR"); Compañia Sud Americana de Vapores S.A. ("CSAV"); and CSAV Agency North America, LLC ("CSAV North America") (all as defined below and hereafter collectively as "Defendants"), as unnamed co-conspirators, providers of Vehicle

Carrier Services (as defined below) globally and in the United States, for engaging in at least a five year-long conspiracy to fix, raise, maintain, and/or stabilize prices and allocate the market and customers in the United States for Vehicle Carrier Services.

2. Plaintiffs seek in this action to represent classes of truck and heavy equipment dealers in approximately 30 states ("Truck and Equipment Dealer Classes") who indirectly purchased from any Defendant, unnamed co-conspirator, or any current or former subsidiary or affiliate thereof, Vehicle Carrier Services incorporated into the price of new Vehicles (defined below) they purchased during the period from January 1, 2000 through such time as the anticompetitive effects of Defendants' conduct ceased (the "Class Period")

3. Defendants transport large numbers of cars, medium- and heavy-duty trucks, and other new, assembled motor vehicles including buses, commercial vehicles, construction equipment, mining equipment, and agricultural equipment (hereafter collectively "Vehicles") across oceans and other large bodies of water using specialized cargo ships known as Roll On-Roll Off vessels ("RoRos"). As used herein, "Vehicle Carrier Services" refers to the paid ocean transportation of Vehicles by RoRo.

4. Competition authorities in the United States, the European Union, Canada, and Japan have been investigating a possible global cartel among Vehicle Carriers since at least September 2012. Both the Antitrust Division of the United States Department of Justice ("DOJ") and Canada's Competition Bureau ("CCB") are investigating unlawful, anticompetitive conduct in the market for ocean shipping of cars, trucks, construction equipment, and other products. The Japanese Fair Trade Commission ("JFTC") and the European Commission Competition Authority ("EC") have also conducted coordinated dawn raids at the Tokyo and European offices of several of the Defendants.

5. On February 27, 2014, the DOJ announced that defendant CSAV agreed to plead guilty and pay a criminal fine of $8.9 million for fixing the prices of Vehicle Carrier Services to and from the United States and elsewhere.

6. Counsel for Plaintiffs believe, based on their experience with and observations of civil antitrust litigation following from other DOJ antitrust prosecutions, that one of the Defendants is an "amnesty applicant" under the DOJ's leniency program. An individual or entity is only eligible for participation in that program if it self-reports its cartel behavior to the DOJ and is only entitled to the reduced damages provisions of the Antitrust Criminal Penalties Enhancement Reform Act if it provides full and timely cooperation to the victims of the cartel.

7. On March 19, 2014, the JFTC announced that it had issued cease and desist orders and surcharge payment orders totaling more than $223 million against defendants NYK, "K" Line, Nissan Motor Car Carrier Co., and WWL for fixing the prices of Vehicle Carrier Services. NYK and Wilhelmsen Logistics AS control about 70 percent of the global Vehicle Carrier Services market.

8. Defendants and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the Vehicle Carrier Services market by agreeing to fix, raise, stabilize, and/or maintain the prices of, and allocation the market and customers for, Vehicle Carrier services sold to Vehicle manufacturers ("OEMs") in the United States and elsewhere for the import and export of new, assembled Vehicles to and from the United States.

9. The combination and conspiracy in which the Defendants and their co-conspirators engaged was an unreasonable restraint of interstate and foreign trade in violation of the Sherman Antitrust Act,. 15 U.S.C. § 1, of state antitrust, unfair competition, and consumer protection laws, and of the common law of unjust enrichment.

10. As a direct result of the anticompetitive and unlawful conduct of Defendants and their co-conspirators alleged in this Complaint, Plaintiffs and the Truck and Equipment Dealer Classes paid artificially inflated prices for Vehicle Carrier Services incorporated into the price of new Vehicles they purchased during the Class Period in the United States, and have thereby suffered antitrust injury to their businesses and property.

11. Plaintiffs did not purchase any Vehicles through a foreign-based subsidiary or agent.

II. JURISDICTION AND VENUE

12. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to secure equitable and injunctive relief against Defendants for violating Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also assert claims for actual and exemplary damages pursuant to state antitrust, unfair competition, and consumer protection laws and the common law of unjust enrichment and seek to obtain restitution, recover damages, and secure other relief against Defendants for violation of those state laws and common law. Plaintiffs and the Truck and Equipment Dealer Classes also seek attorneys' fees, costs, and other expenses under federal and state law.

13. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1), and 28 U.S.C. §§ 1331 and 1337.

14. This Court has subject matter and supplemental jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §§ 1332(d) and 1367, in that (i) this is a class action in which the matter or controversy exceeds the sum of $5,000,000, exclusive of interests and costs, and in which some members of the Truck and Equipment Dealer Classes are citizens of a state different from some of the Defendants; and (ii) the state law claims of the Plaintiffs and the

Truck and Equipment Dealer Classes form part of the same case or controversy as their federal claims under Article III of the United States Constitution.

15. Venue is proper in this District pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22) and 28 U.S.C. §§ 1391 (b), (c), and (d) because a substantial portion of the events giving rise to Plaintiffs' claims occurred in this District, a substantial portion of affected interstate trade and commerce discussed below has been carried out in this District, and one or more of the Defendants reside, are licensed to do business in, are doing business in, had agents in, or are found or transact business in, this District.

16. This Court has *in personam* jurisdiction over each of the Defendants because each Defendant, either directly or through the ownership and/or control of its United States subsidiaries, *inter alia*, (a) transacted business in the United States, including in this District; (b) directly or indirectly sold or marketed Vehicle Carrier Services throughout the United States, including in this District, through its ports and waterways; (c) had substantial aggregate contacts with the United States as a whole, including in this District; (d) was engaged in an illegal price-fixing conspiracy that was directed at, and had the direct, substantial, reasonably foreseeable, and intended effect of causing injury to the business or property of persons and entities residing in, located in, or doing business throughout, the United States; and/or (e) engaged in actions in furtherance of an illegal conspiracy in this District, either directly or through its co-conspirators. Defendants also conduct business throughout the United States, including in this District, and they have purposefully availed themselves of the laws of the United States.

17. Defendants engaged in conduct both inside and outside the United States that caused direct, substantial, and reasonably foreseeable and intended anticompetitive effects on interstate commerce in the United States.

18. The activities of the Defendants and their co-conspirators were in the flow of and were intended to have, and did have, a substantial effect on interstate commerce in the United States.

19. Vehicles, the prices of which include the cost of Vehicle Carrier Services, that are manufactured abroad are transported from abroad by Defendants and their co-conspirators to truck and heavy equipment dealers in the United States through ports in United States cities and sold for use within the United States. They are goods brought into the United States for sale and, by their very nature, constitute import commerce. However, to the extent any Vehicles and related Vehicle Carrier Services purchased in the United States did not constitute import commerce, the unlawful activities of Defendants and their co-conspirators with respect thereto had, and continue to have, a direct, substantial, and reasonably foreseeable effect on United States commerce. Such unlawful activites, and the effect thereof on United States commerce, proximately caused antitrust injury to the Plaintiffs and the members of the Truck and Equipment Dealer Classes in the United States.

20. By the unlawful activies alleged in this Complaint, Defendants and their co-conspirators substantially affected commerce throughout the United States and caused substantial and foreseeable injury to Plaintiffs and the members of the Truck and Equipment Dealer Classes.

III. PARTIES

A. Plaintiffs

21. Plaintiff Rush AZ is a Delaware corporation with its principal place of business in Arizona. Rush AZ is an authorized Peterbilt and Hino dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

22. During the Class Period, Rush AZ purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush AZ purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Arizona. Rush AZ has also displayed, sold, serviced, and advertised Vehicles in Arizona during the Class Period.

23. Plaintiff Rush CA is a Delaware corporation with its principal place of business in California. Rush CA is an authorized Peterbilt, Hino, Isuzu, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

24. During the Class Period, Rush CA purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush CA purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in California. Rush CA has also displayed, sold, serviced, and advertised Vehicles in California during the Class Period.

25. Plaintiff Rush CO is a Delaware corporation with its principal place of business in Colorado. Rush CO is an authorized Peterbilt, Isuzu, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

26. During the Class Period, Rush CO purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush CO purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Colorado. Rush CO has also displayed, sold, serviced, and advertised Vehicles in Colorado during the Class Period.

27. Plaintiff Rush FL is a Delaware corporation with its principal place of business in Florida. Rush FL is an authorized Peterbilt, Hino, and Isuzu dealer that buys and then sells

Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

28. During the Class Period, Rush FL purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush FL purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Florida. Rush FL has also displayed, sold, serviced, and advertised Vehicles in Florida during the Class Period.

29. Plaintiff Rush GA is a Delaware corporation with its principal place of business in Georgia. Rush GA is an authorized International, Hino, Isuzu, and IC Bus dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

30. During the Class Period, Rush GA purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush GA purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Georgia. Rush GA has also displayed, sold, serviced, and advertised Vehicles in Georgia during the Class Period.

31. Plaintiff Rush ID is a Delaware corporation with its principal place of business in Idaho. Rush ID is an authorized International, Autocar, and IC Bus dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

32. During the Class Period, Rush ID purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush ID purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Idaho. Rush ID has also displayed, sold, serviced, and advertised Vehicles in Idaho during the Class Period.

33. Plaintiff Rush KS is a Delaware corporation with its principal place of business in Kansas. Rush KS is an authorized Hino and Isuzu dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

34. During the Class Period, Rush KS purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush KS purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Kansas. Rush KS has also displayed, sold, serviced, and advertised Vehicles in Kansas during the Class Period.

35. Plaintiff Rush NC is a Delaware corporation with its principal place of business in North Carolina. Rush NC is an authorized International, Peterbilt, Hino, and Isuzu dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

36. During the Class Period, Rush NC purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush NC purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in North Carolina. Rush NC has also displayed, sold, serviced, and advertised Vehicles in North Carolina during the Class Period.

37. Plaintiff Rush OH is a Delaware corporation with its principal place of business in Ohio. Rush OH is an authorized International, IC Bus, Isuzu, Ford, and Mitsubishi dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

38. During the Class Period, Rush OH purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush OH purchased and received the afore-mentioned

Vehicles and paid for the Vehicle Carrier Services in Ohio. Rush OH has also displayed, sold, serviced, and advertised Vehicles in Ohio during the Class Period.

39. Plaintiff Rush OK is a Delaware corporation with its principal place of business in Oklahoma. Rush OK is an authorized Peterbilt, Hino, Isuzu, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

40. During the Class Period, Rush OK purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush OK purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Oklahoma. Rush OK has also displayed, sold, serviced, and advertised Vehicles in Oklahoma during the Class Period.

41. Plaintiff Rush TX is a Texas limited partnership with its principal place of business in Texas. Rush TX is an authorized Peterbilt, Hino, Isuzu, Blue Bird, Micro Bird, Elkhart, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

42. During the Class Period, Rush TX purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush TX purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Texas. Rush TX has also displayed, sold, serviced, and advertised Vehicles in Texas during the Class Period.

43. Plaintiff Rush UT is a Delaware corporation with its principal place of business in Utah. Rush UT is an authorized International, IC Bus, Autocar, and Mitsubishi Fuso dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

44. During the Class Period, Rush UT purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Rush UT purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Utah. Rush UT has also displayed, sold, serviced, and advertised Vehicles in Utah during the Class Period.

B. Defendants

45. Defendant NYK is a Japanese company. NYK has subsidiaries acting as its agents in the United States, including in Secaucus, New Jersey. NYK, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, shipped Vehicles into the United States, including in this District, during the Class Period. NYK, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, also marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

46. Defendant NYK America is a wholly owned subsidiary of defendant NYK. NYK America is headquartered in Secaucus, New Jersey and acts as NKY's agent in the United States. At all times during the Class Period, the activities of NYK American in the United States were under the control and direction of NYK, which controlled its policies, sales, and finances. NYK America shipped Vehicles into the United States, including to and from this District, during the Class Period. NYK America also marketed, sold, or provided Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

47. Defendant MOL is a Japanese company. MOL has subsidiaries acting as its agents in the United States and has offices throughout the country, including in Lombard, Illinois where it has a business headquarters. MOL, directly or through subsidiaries which it wholly owns or controls,, shipped Vehicles into the United States, including to and from this District, during the Class Period. MOL, directly or through subsidiaries which it wholly owned and/or

controlled, marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

48. Defendant MOL USA is a wholly owned subsidiary of MOL and is a New Jersey corporation. MOL USA acts as defendant MOL's agent in the United States. At all times during the Class Period, the activities of MOL USA were under the control and direction of MOL, which controlled its policies, sales, and finances. MOL USA shipped Vehicles into the United States, including to and from this District, during the Class Period. MOL USA also marketed, sold, or provided Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

49. Defendant WLS in a wholly owned subsidiary of MOL and is a California corporation headquartered in Long Beach, California. WLS acts as defendant MOL's agent in the United States. At all times during the Class Period, the activities of WLS were under the control and direction of MOL, which controlled its policies, sales, and finances. WLS shipped Vehicles into the United States, including to and from this District, during the Class Period. WLS also marketed, sold, or provided Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

50. Defendant Höugh is a Norwegian company. Höugh has subsidiaries acting as its agents in the United States. Höugh, directly and through its subsidiaries which it wholly owns or controls, shipped Vehicles into the United States, including to and from this District, during the Class Period. Höugh, directly and through its wholly owned or controlled subsidiaries, also marketed, sold, or provided Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

51. Defendant "K" Line is a Japanese company. "K" Line has subsidiaries acting as its agents in the United States. "K" Line, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, shipped Vehicles into the United States, including to and from this District, during the Class Period. K Line, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, also marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

52. Defendant "K" Line America is a wholly owned subsidiary of defendant "K" Line and is a Virginia corporation headquartered in Richmond, Virginia. "K" Line America acts as defendant "K" Line's agent in the United States. At all times during the Class Period, the activities of "K" Line America in the United States were under the control and direction of "K" Line, which controlled its policies, sales, and finances. "K" Line America shipped Vehicles into the United States, including to and from this District, during the Class Period. "K" Line America also marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

53. Defendant WWL is a Norwegian-Swedish company. It is a joint venture between Wallenius Lines AB and Wilh. Wilhelmsen ASA that operates most of those companies' vessels and is the contracting party in customer contracts with Vehicle manufacturers for RoRo services. WWL has offices throughout the United States, including in New Jersey, and has subsidiaries that act as its agents in the United States, including in New Jersey. WWL, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, shipped Vehicles into the United States, including to and from this District, during the Class Period. WWL, directly or through its wholly owned and/or controlled subsidiaries or joint ventures, also marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

54. Defendant WWL Americas is a New Jersey limited liability company headquartered in Woodcliff Lake, New Jersey. WWL Americas acts as defendant WWL's agent in the United States. At all times during the Class Period, the activities of WWL Americas in the United States were under the control and direction of WWL, which controlled its policies, sales, and finances. WWL Americas shipped Vehicles into the United States, including to and from this District, during the Class Period. WWL Americas also marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

55. Defendant EUKOR is a South Korean company that has offices throughout the United States, including in Fort Lee, New Jersey, and has subsidiaries acting as its agents in the United States, including in New Jersey. EUKOR shipped Vehicles into the United States, including to and from this District, during the Class Period. EUKOR, directly or through its wholly owned and/or controlled subsidiaries, also marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

56. Defendant CSAV is a Chilean company. CSAV has offices throughout the United States, including in Iselin, New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. CSAV shipped Vehicles into the United States, including to and from this District, during the Class Period. CSAV, directly or through its wholly owned and/or controlled subsidiaries, also marketed, sold, or provided Vehicle Carrier Services in the United States, including in this District, during the Class Period.

57. Defendant CSAV North America is a subsidiary wholly owned subsidiary of defendant CSAV and is a limited liability company headquartered in Iselin, New Jersey. CSAV North America acts as CSAV's agent in the United States and is the exclusive maritime agent for CSAV in the United States. At all times during the Class Period, the activities of CSAV North

America in the United States were under the control and direction of CSAV, which controlled its policies, sales, and finances. CSAV North America shipped Vehicles into the United States, including to and from this District, during the Class Period. CSAV North America also marketed, sold, or provided its Vehicle Carrier Services in the United States, including in this District, during the Class Period.

IV. AGENTS AND CO-CONSPIRATORS

58. Each Defendant acted as the principal of or agent for the other Defendant with respect to the acts, violations, and common course of conduct alleged.

59. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as Defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with Defendants in the offenses alleged in this Complaint and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anti-competitive conduct.

60. Whenever reference is made in this Complaint to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation or limited liability entity's business or affairs.

V. FACTUAL ALLEGATIONS

A. The Vehicle Carrier Industry.

61. The ocean shipping industry is comprised of multiple sectors and multiple types of vessels, including bulk carriers, tankers, and vehicle carriers. The conduct at issue in this action occurred in the vehicle carriers industry. Vehicle carriers ship Vehicles as well as other so-called "high and heavy" cargo—cargo that is bigger and heavier than a Vehicle and requiring

special shipping arrangements—and small, ancillary, non-movable cargo such as the plow blade for a plow truck, for exmaple.

62. The vehicle carrier industry involves ocean shipping via RoRo ships. A RoRo ship is a special type of ocean vessel that allows wheeled vehicles to be driven and parked on its decks for long voyages. These ships, also known as vehicle carriers ("Vehicle Carriers"), have special ramps to permit easy access, high sides to protect the cargo during transport, and numerous decks to allow storage of a large number and variety of vehicles.

63. There are various types of RoRo ships. A pure car carrier ("PCC") is like a floating parking garage that transports Vehicles. PCCs generally have multiple levels of parking for Vehicles, which levels are often moveable to accommodate high and heavy cargo. A pure car and truck carrier ("PCTC") transports cars, trucks, and other wheeled vehicles using a slightly different configuration than the typical PCC.

64. In the market for Vehicle Carrier Services, there is a distinction between "deep sea services" and "short sea services." Deep sea vessels are large and transport thousands of Vehicles between continents. Short sea vessels are smaller and transport fewer Vehicles than deep sea vessels over shorter distances. Short sea vessels can enter smaller ports and shallower waters than deep sea vessels.

65. The vast majority of demand for deep sea services using RoRos involves the shipping of Vehicles. Consequently, the main ocean routes for such services connect major vehicle manufacturing countries with major import markets for Vehicles. Such countries typically have several ports of call, and vessels generally sail in rotation, visiting a sequence of ports.

66. Vehicle Carriers are a defined subdivision of the larger bulk shipping market. While oceangoing container ships allow a wide range of goods to be packed in standard sized containers for quick loading and delivery, cars, trucks and other types of Vehicles are not easily shipped in such containers due to their larger sizes and more irregular shapes and must, consequently, be shipped via Vehicle Carrier. There are no reasonable substitutes to Vehicle Carrier Services because other shipping alternatives, such as shipping by air, would be too costly, and ground shipping would be impossible due to geographic considerations, among other things.

67. Defendants and their co-conspirators provide Vehicle Carrier Services to OEMs for transportation of Vehicles from their country of origin to the country where they will be sold, including the United States, where the Vehicles are then delivered to Plaintiffs and the other members of the Truck and Equipment Dealer Classes. Defendants' customers include manufacturers of medium- and heavy-duty trucks such as Hino, Isuzu, and Mitsubishi Fuso, buses, commercial vehicles, construction equipment, mining equipment, agricultural equipment, and other similar vehicles. These manufacturers or their agents directly purchase Vehicle Carrier Services from Defendants. Plaintiffs and the Truck and Equipment Dealer Classes are then billed in full and pay in full for the Vehicle Carrier Services when they purchase Vehicles from the OEMs with which they do business. Thus, Plaintiffs and members of the proposed Truck and Equipment Dealer Classes purchased Vehicle Carrier Services indirectly from Defendants and their co-conspirators by virtue of their purchase of Vehicles from OEMs during the Class Period.

68. The Defendants engage in three different types of pricing negotiations with OEMs:

- Bilateral negotiations, whereby an OEM renews a carriage contract with a provider of Vehicle Carrier Services.

- Price reduction requests, whereby an OEMs seeks lower freight rates from a provider of Vehicle Carrier Services.
- Tenders, whereby an OEM invites multiple providers of Vehicle Carrier Services to bid for a new or renewed contract award. Tenders involve an initial round of bids followed by a second round of bids.

69. The contract period between a non-Japanese OEM and a provider of Vehicle Carrier Services, including the Defendants, is typically two or three years in duration. The contract period between a Japanese OEM and a provider of Vehicle Carrier Services, including the Defendants, is typically one year in duration.

70. In Japan, OEMs typically negotiate with the incumbent Vehicle Carrier when a contract is due to expire, rather than engage in a tender process. Vehicle Carrier Services contracts usually expire in April of each year, and contract renewal negotiations often begin in December of the prior year.

71. American OEMs often employ a tender process to award Vehicle Carrier Services contracts.

72. Whether negotiated bilaterally or awarded by tender, contracts for Vehicle Carrier Services generally cover global requirements for the applicable contract period, though rates for each route are often negotiated separately.

73. Contract freight rates for Vehicle Carrier Services are set on a per-unit basis. However, rates for high and heavy cargo are set based on weight or cubic meter.

74. Defendants also impose surcharges in addition to standard rates for Vehicle Carrier Services. Primary surcharges imposed by Defendants are:

- The Bunker Adjustment Factor ("BAF"), which relates to fuel, and
- The Currency Adjustment Factor ("CAF"), which relates to the fluctuation of currency exchange rates.

75. Defendants and their co-conspirators provided Vehicle Carrier Services to OEMs for transportation of Vehicles to and from the United States and elsewhere. Defendants and their co-conspirators provided Vehicle Carrier Services in the United States for the transportation of Vehicles manufactured elsewhere for export to and sale in the United States, as well as in other countries for the transportation of Vehiles manufactured elsewhere for export to and sale in the United States.

76. The market for the transportation of new, imported Vehicles manufactured elsewhere for export to and sale in the United States is between $600 and $800 million each year.

B. The Market Structure and Characteristics of the Market for Vehicle Carrier Services Support the Existence of the Conspiracy

77. The structure and other characteristics of the Vehicle Carrier Services market are conducive to a price-fixing agreement and have made collusion particularly attractive. Specifically, the Vehicle Carrier Services market (1) has high barriers to entry, (2) has inelasticity of demand, (3) is highly concentrated, (4) is highly homogenized, (5) is rife with opportunities to meet and conspire, and (6) has excess capacity.

1. The Vehicle Carrier Services Market Has High Barriers to Entry.

78. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new sources of supply seeking to benefit from the supra-competitive pricing. When, however, there are significant barriers to entry, new entrants are much less likely to enter the market. Thus, barriers to entry help facilitate the formation and maintenance of a cartel.

79. There are substantial barriers that preclude, reduce, or make more difficult entry into the Vehicle Carrier Services market. Transporting Vehicles without damaging them across oceans requires highly specialized and sophisticated equipment, resources, and industry

knowledge. The ships that make such transport possible are highly specialized. Those ships are built using an unusual design that includes especially high sides, multiple interior decks, and no container cargo space. These unique design characteristics restrict the use of such ships to the Vehicle Carrier Services market. A new entrant into the Vehicle Carrier Services market would face high start-up costs, including multi-million dollar costs associated with manufacturing or acquiring a fleet of Vehicle CarriersRoRos and other equipment, energy, transportation, distribution infrastructure, and skilled labor, as well as a lengthy start up period.. It is estimated that the cost of a single RoRo is at least $95 million.

80. Additionally, the nature of the Vehicle Carrier Services industry requires the establishment of a network of routes to serve a particular set of customers with whom a new supplier would seek to establish relationships, but with whom Defendants already have long-term relationships and contracts of significant duration presently in place. The existence of such routes and contracts increase switching costs for shippers and present an additional barrier to entry.

81. The Vehicle Carrier Services market also involves economies of scale and scope, which present additional barriers to entry.

(a) Economies of scale exist where firms can lower the average cost per unit through increased production, since fixed costs are shared over a larger number of units. Vehicle Carriers are less sensitive to fuel prices than other modes of transportation, providing opportunities to exploit economies of scale. As fuel prices increased in the last five to ten years, market participants were incentivized to increase the average size of vessels. This reflects the presence of economies of scale, because fuel costs did not increase proportionally as vessel size grew.

(b) Economies of scope exist where firms achieve a cost advantage from providing a wide variety of products or services. The major Vehicle Carriers, including Defendants, own related shipping or transportation businesses they can utilize to provide additional services to clients, such as the operation of dedicated shipping terminals and inland transportation of Vehicles.

2. There is Inelasticity of Demand for Vehicle Carrier Services.

82. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be "inelastic" if an increase in the price of a product results in only a small decline or no decline in the quantity sold of that product. In such circumstances, customers have nowhere to turn for alternative, cheaper products of similar quality, and so those customers continue to purchase despite the price increase.

83. For a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales, revenues, and profits as customers turn to substitute products or decline to buy altogether. Inelastic demand is a market characteristic that facilitates collusion because it allows producers to raise their prices without triggering customer substitution and lost sales revenue.

84. Demand for Vehicle Carrier Services is highly inelastic. This is because there are no close substitutes for those services. A Vehicle Carrier is the only type of ocean vessel that has the carrying capacity for a large number of Vehicles. A Vehicle Carrier is also more versatile than other substitutes because it is built to adjust to various shapes and sizes of Vehicle cargo. Because a container ship requires uniformity in the size of the cargo—everything must fit within the standardized containers—it is not conducive to transporting larger and more irregularly-shaped goods, such as cars, trucks, and heavy equipment. OEMs that fabricate

Vehicles overseas must employ Vehicle Carrier Services to facilitate the sale of their Vehicles in North America, regardless of whether prices for Vehicle Carrier Services are at *supra*-competitive levels. Such OEMs simply have no viable alternative to high volume transoceanic transportation of Vehicles to the United States.

3. The Market for Vehicle Carrier Services is Highly Concentrated.

85. A concentrated market is more susceptible to collusion and other anticompetitive conduct.

86. Defendants dominate the global Vehicle Carrier Services market, controlling among themselves over 70 percent of the Vehicle Carrier Services market during the Class Period.

4. The Services Provided by Vehicle Carriers are Highly Homogenous.

87. Vehicle Carrier Services are a commodity-like service and are interchangeable among the providers of those services.

88. When products or services offered by different suppliers are viewed by purchasers as interchangeable, it is easier for the suppliers to agree with each other on the price to be charged for the product or service in question, and it is easier for those suppliers to police effectively the collusively set prices which, in turn, makes it easier to form and sustain an unlawful cartel.

89. Vehicle Carrier Services are qualitatively the same across different carriers. Each Defendant has the capability to provide the same or similar Vehicle Carrier Services. Purchasers of Vehicle Carrier Services make purchase decisions based primarily on price. The commoditization and interchangeability of Vehicle Carrier Services facilitated the Defendants'

conspiracy by making coordination on price much simpler than if Defendants had many distinct products or services with varying and differentiating features.

5. Defendants Have Had Ample Opportunities to Conspire.

90. Within the shipping industry, many of the key figures know one another. Certain senior executives at KYK, MOL, and "K" Line are key figures within the shipping industry.

91. Defendants attended industry events where they had the opportunity to meet, have improper discussions under the guise of legitimate business contacts, and perform acts necessary for the operation and furtherance of the conspiracy. For example, there are frequent trade shows for shipping companies around the globe, such as the Breakbulk conferences and the biennial RoRo trade show in Europe.

92. Many employees of the Defendants have spent their entire professional careers in the shipping industry. In several instances, key employees have moved from a position with one of the Defendants to a position at another of the Defendants. This, coupled with the other circumstances present in the shipping industry, fostered familiarity and connections between professed competitors and facilitated the high-level coordination of the conspiracy among the Defendants.

93. Defendants are members of several shipping industry trade associations that provided opportunities for the Defendants to meet under the auspices of legitimate business purposes. For example, several of the Defendants are members of the ASF Shipping Economics Review Committee. Among the meetings of that Committee was a meeting on March 2, 2010 in Tokyo, Japan that was attended by senior executives from NKY, MOL, and "K" Line.

94. Defendants CSAV (through CSAV Group North America), NYK America, "K" Line America, MOL (through MOL (America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

95. Defendants "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

96. Defendants "K" Line, MOL (through MOL (America), Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

97. Defendants CSAV, "K" Line, MOL, NYK Line, and WWL are members of the World Shipping Council, and defendants CSAV, "K" Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was ultimately absorbed by the World Shipping Council.

98. Defendants NYK Line, "K" Line, and MOL are members of the Japan Shipowners' Association, a shipping industry trade association based in Japan.

99. These industry trade associations and the meetings, trade shows, and other industry events that they organized and attended provided Defendants with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy.

100. In addition to participating in several trade associations with one another, Defendants also did business directly with one another. For example, Defendants routinely entered into vessel-sharing agreements whereby they reserved space on each other's ships. Such sharing or chartering agreements are common in the international marine shipping industry.

101. Chartering agreements entered into between the Defendants were primarily of two types: space charters and time charters. A space charter is a chartering agreement by which one shipping carrier charters space on another shipping carrier's vessel. The opportunity for a space chartering agreement arises when one shipping carrier has less than full capacity on one of its vessels and another shipping carrier needs additional capacity. A time charter is a chartering agreement by which one shipping carrier fully charters another shipping carrier's vessel for a

certain period of time or particular voyage. The opportunity for a time charter arises when a shipping carrier would otherwise send a vessel home empty and another shipping carrier needs shipping space.

102. While ostensibly entered into in order to optimize utilization capacity and increase efficiency, such sharing and chartering agreements also provided opportunities for the Defendants to enact, coordinate, and police their conspiracy by, among other things, discussing Vehicle Carrier Services market shares, routes, and rates, as well as price fixing, bid rigging, and market and customer allocation.

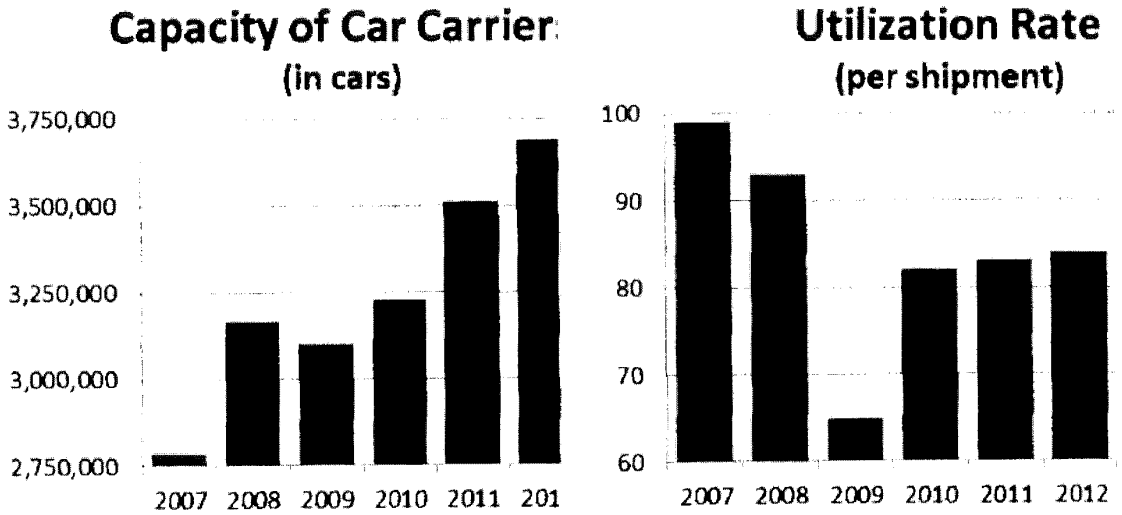
103. The very nature of the negotiations between Vehicle Carriers and OEMs also facilitated collusion among the Defendants. As explained by an executive from WWL in a publication called Automotive Supply Chain in 2012, using Japan as an example:

> [T]he manufacturers there, in order to get the right frequency, the right market coverage and the right ports, have often called in two, three, sometimes four shipping lines around the table and said that they would spread their volumes between them, depending on how competitive they were. The shipping lines have to work together to find ways of not having ships in the same position and ways of having one line deliver at the beginning of the month and another mid-month.

6. The Market for Vehicle Carrier Services Has Experienced Excess Capacity.

104. Excess capacity occurs when a market is capable of supplying more of a product or service than is needed. This often means that demand is less than the output the market has the capability to produce. Academic literature suggests, and courts have found, that the presence of excess capacity can facilitate collusion. See Benoit, J. and Krishna, V., Dynamic Duopoly: Prices and Quantities, Rev. of Econ. Studies, 54, 23-36 (1987); Davidson, Carl & Deneckere, Raymond, Excess Capacity and Collusion, Int'l Econ. Rev., 31(3), 521-41 (1990); In re High Fructose Com Syrup Antitrust Litig., 295 F.3d 651, 657 (7th Cir. 2002).

105. The market for Vehicle Carrier Services has operated in a state of excess capacity since 2008. The tables below demonstrate that while the capacity of Vehicle Carriers to transport Vehicles has increased since 2007, the utilization rate of Vehicle Carriers has fallen, and remained stable at a rate of approximately 83 percent since 2010.



106. In the face of such excess capacity, Defendants agreed to reduce capacity and increase prices through fleet reduction, also known as "scrapping" or "lay-ups." Scrapping involves taking a ship out of commission and rendering the vessel unusable. A "hot lay-up" involves taking a ship out of service while still retaining its crew to perform maintenance. A "cold lay-up" involves taking a vessel out of service and dismissing its crew. A ship that is laid-up may be re-commissioned, but doing so involves certain restart-up costs. A cold lay-up requires higher restart-up costs to re-commission a vessel than does a hot lay-up.

107. Defendants' concerted, collusive efforts to reduce their fleets via scrapping and lay-ups decreased the availability of Vehicle Carrier Services and caused prices for such services to rise artificially during the Class Period.

C. Witnesses Have Confirmed Evidence of Collusion in the Vehicle Carrier Services Market

1. Defendants Conspired to Inflate Prices of Vehicle Carrier Services Artificially

a. Coordination of Price Increases

108. Defendants discussed Vehicle Carrier Services pricing with each other from as early as 1997. In February of 1997, defendants "K" Line, MOL, and NYK Line met several times in Tokyo to discuss Honda's upcoming renewal for the Japan to United States Vehicle shipping route.

109. Generally, one carrier will be the "lead" service provider for an OEM such as Honda, even as multiple carriers may provide services to that OEM during that same period.

110. In 1997, MOL had an existing business relationship with Honda. In connection with their meeting in February of 1997, "K" Line, MOL, and NYK agreed separately to request a price increase from Honda on the Japan to United States route. They also collectively agreed specifically to request a price increase for shipping Honda Accord automobiles, which were manufactured in the United States at that time, on the United States to Japan route.

111. In 2002, defendants "K" Line and MOL shared approximately 50 percent of Volkswagen's business on shipping routes to the United States. Around that time, "K" Line and MOL agreed to seek a price increase of between 3 and 5 percent from Volkswagen.

112. In late 2007, Volkswagen issued a tender for the Europe to United States route. "K" Line and MOL discussed the tender and agreed to seek a price increase from Volkswagen.

113. In late 2007 or early 2008, executives from defendants "K" Line, MOL, and NYK met on several occassions to discuss a 10 percent increase in pricing for 2008 on the Japan to United States shipping route.

114. In November of 2007, representatives of MOL and NYK agred to increase prices for Vehicle Carrier Services in 2008 and persuated "K" Line to do the same.

115. In December of 2007, representatives of MOL and NYK met for dinner in Tokyo to discuss increased costs and the need for a corresponding increase in Vehicle Carrier Services pricing in 2008.

116. On January 11, 2008, representatives of MOL, NYK, and "K" Line attended a lunch meeting at which MOL, NYK and "K" Line agreed that their joint objective would be to secure a price increase on Vehicle Carrier Services of between 5 percent and 7.5 percent. Those three companies then had a follow-up meeting at which they discussed how to implement the coordinated price increases. They agreed that each of them would take the lead to increase prices with those OEMs with whom they had the strongest business relationship.

117. On January 28, 2008, representatives from MOL, NYK, and "K" Line met to discuss the 2008 price increase further and agreed on a target increase of 10 percent. Those entities then met the following month in furtherance of their agreement.

118. In November of 2011, Höugh and MOL executives had a dinner meeting in which they discussed pricing for the United States to West Africa Vehicle shipping routes, which both Defendants serviced.

b. Coordination of Responses to Price Reduction Requests

119. In the fall of 2008, representatives from MOL, NYK and "K" Line communicated with one another about price increases and price negotiations with Mitsubishi. They agreed at that time on the amount of a price increase that each would seek from Mitsubishi for their Vehicle Carrier Services.

120. In 2009, Mitsubishi requested a price reduction from "K" Line, MOL, and NYK Line equal to the price increase enacted in 2008, as well as retroactive application of that

reduction. MOL, NYK, and "K" Line discussed Mitsubishi's request with one another and collusively agreed to limit the amount of the price reduction and to respond to Mitsubishi's request with offers of identical reductions of 50 percent of the 2008 price increases.

121. In 2009, Suzuki sought a price reduction from MOL, NYK, and "K" Line. Representatives from MOL, NYK, and "K" Line met to discuss Suzuki's request and all collusively agreed to reduce prices by the same amount. Similar collusive price reduction discussions occurred in 2010.

122. In September of 2011, Toyota informed MOL that MOL's BAF and CAF surcharges were higher than those of its competitors and requested a price reduction. MOL then discussed pricing for Toyota with NYK, and "K" Line and thereafter subsequently agreed to Toyota's reduction request.

123. In 2012, Subaru sought a price reduction from MOL and NYK. Historically, NYK was the lead Vehicle Carrier Services provider for Subaru. MOL and NYK then collusively agreed to bid their existing prices to Subaru.

2. Defendants Conspired to Allocate Customers and Routes for Vehicle Carrier Services

124. In approximately 2001, MOL and Höugh discussed Honda Vehicle Carrier Services business from the United States to the Middle East with one another. MOL told Höugh that, while MOL was not the incumbent carrier for that particular route, MOL wanted the business and requested that Höugh refrain from bidding on that route and, in return, MOL promised to use certain of Höugh's vessels on the route if MOL was awarded the business. Höugh agreed and MOL subsequently won the bid. As it had promised, MOL chartered Höugh vessels for the route.

125. In response to a tender issued by General Motors ("GM") in 2001 or 2002, MOL asked WWL not to submit a competitive bid out of "respect" for MOL's incumbent business with GM. "Respect" is a term of art in Japanese business culture, which in various contexts could mean not bidding, or simply bidding a higher price. WWL agreed to do as MOL requested. MOL also asked NYK to submit a higher bid than MOL and told NKY what rate to bid. NKK agreed and submitted MOL's requested bid.

126. In 2002 or 2003, MOL spoke with WWL about a Ford tender. WWP was the incumbent Vehicle Carrier Services provider for Ford from Europe to the United States, and MOL wanted to secure Ford's business from Thailand to the United States. WWL and MOL agreed not to compete with each other for the Ford business, and WWL told MOL what rate to bid on the Europe to United States route. MOL submitted that bid. At the same time, MOL secured an agreement from Höugh not to compete with MOL for Ford's business on the Thailand to United States route, and MOL agreed to "respect" Höugh's Vehicle Carrier Services business relationship with Ford on routes from Africa to the Middle East.

127. In 2004, WWL agreed to "respect" MOL's Vehicle Carrier Services business relationships with Daimler and BMW for the route from South Africa to the United States. In return, MOL agreed to "respect" WWL's Vehicle Carrier Services business relationships with Daimler and BMW for the route from Europe to the United States.

128. In the fall of 2008, representatives from MOL, NYK, and "K" Line had discussions about an upcoming Mitsubishi tender and agreed on the routes each would seek. They agreed that NYK and "K" Line would seek the Vehicle Carrier Services business for Mitsubishi to the West Coast of the United States and the three companies agreed to share Mitsubishi's East Coast business.

129. In 2008 or 2009, MOL asked "K" Line to "respect" its incumbent status with Chrysler for the Vehicle Carrier Services business from the United States to South Africa. "K" Line agreed and, in return, MOL agreed to "respect" "K" Line's Vehicle Carrier Services business on "K" Line's routes from Brazil to the United States and Argentina.

130. In too8 or 2009, MOL and WWL agreed to "respect," rather than compete for, each other's Daimler and BMW business. Specifically, WWL agreed not to compete for MOL's Daimler business from Europe to the United States. In return, MOL agreed not to compete for WWL's BMW business from Europe to the United States.

131. In 2010, CSAV asked MOL to "respect" its GM business on routes from the United States to Columbia. MOL agreed and submitted a bid for that business at a non-competitive price that had been provided by CSAV. That tender covered the period 2010 to 2012.

132. In early 2012, representatives of MOL and WWL met to discuss their companies' American Honda contracts. MOL and WWL agreed not to compete with one another on certain routes from the United States to China and from the United States to Korea for American Honda. WWL supplied MOL with a suggested price for MOL to use in MOL's bid on Honda's United States-China route in order to enable WWL to retain that business, which WWL did. In exchange, MOL supplied WWL with a suggested price for WWL to use in WWL's bid on Honda's United States-Korea route in order to enable MOL to retain that business.

3. Defendants Conspired to Restrict Capacity for Vehicle Carrier Services

133. Defendants MOL, NYK, "K" Line, Höugh, WWL, and/or EUKOR also agreed to manipulate capacity and restrict the supply of Vehicle Carrier Services via fleet reductions.

134. From at least the late 1990s through 2002, defendants MOL, "K" Line, NYK, Höugh, and WWL executives met twice a year in Europe and Japan and discussed fleet reductions via ship scrapping and lay-ups.

135. In or around 2008 or 2009, demand for Vehicle Carrier Services fell as a result of the worldwide financial crisis. Thereafter, representatives of MOL, NKY, and "K" Line met to discuss fleet reductions. MOL, NYK, and "K" Line agreed to scrap vessels, and generally discussed and agreed on the need to resist price reduction requests from OEMs. During this same time period, representatives from WWL and Höugh also spoke about the need for fleet reductions. As a result of those discussions, MOL scrapped approximately 40 vessels, NYK scrapped approximately 40 vessels, "K" Line scrapped approximately 25 vessels, WWL engaged in cold lay-ups, and Höugh engaged in cold lay-ups.

4. Guilty Pleas in the Vehicle Carrier Services Industry

136. On February 27, 2014, the DOJ filed a one count criminal Information in federal district court in Maryland reflecting a guilty plea by defendant CSAV in connection with the manipulation of prices and allocation of customers and routes for Vehicle Carrier Services during the period 2000-2012 in connection with shipment of vehicles including trucks and construction and agricultural equipment on RoRo ships. According to the DOJ filing, during that period, CSAV and other co-conspirators held meetings and engaged in other communications in which they agreed to set prices and allocate customers, vowed to refrain from bidding against one another, and exchanged pricing information. Under that guilty plea, CSAV agreed to pay a criminal fine of $8.9 million.

137. The criminal Information filed against CSAV is the first charge in an ongoing federal antitrust investigation into price-fixing, bid-rigging, and other anticompetitive conduct in the international ocean shipping industry conducted by the DOJ Antitrust Division's National

Criminal Enforcement Section and the FBI's Baltimore Field Office, along with assistance from the United States Customs and Border Protection, Office of Internal Affairs, and Washington Field Office/Special Investigations Unit.

5. Government Fines in the Vehicle Carrier Services Industry

138. On December 23, 2013, the Federal Maritime Commission announced compromise agreements reached with two common carriers operating RoRo vessels in U.S. inbound and outbound trades. Under those separate agreements, defendant "K" Line paid $1,100,000 in civil penalties and defendant NYK paid $1,225,000 in penalties to resolve allegations that those companies violated provisions of the Shipping Act, including section 10(a) of the Shipping Act, 46 U.S.C. § 41102(b), by acting in concert with other ocean common carriers with respect to the shipment of automobiles and other motorized vehicles by RoRo or specialized car carrier vessels, where such agreement(s) had not been filed with the Federal Maritime Commission or become effective under the Shipping Act. The compromise agreements also addressed related activities and violations. Federal Maritime Commission staff alleged that these practices persisted over a period of several years and involved numerous U.S. trade lanes, including from and/or to the Far East, Europe, the Middle East and South America.

139. On March 18, 2014, the JFTC announced it had fined four marine transport companies—defendants NYK, "K" Line, WWL, and Nissan Motor Car Carrier Co., Ltd.—a total of 22,718,480,000 JPY ($227 million) for engaging in price-fixing activities and violating the AMA. The JFTC's action followed cease and desist and surcharge payment orders that were issued by the JFTC on Jan. 9, 2014. According to the JFTC announcement, the violations included fixing freight rates, colluding to maintain the freight rate, and refraining from bidding against one another from January 2008 to September 2012 with regard to automobile and truck shipments from Japan to North America, Europe and elsewhere.

140. The JFTC found that NYK, "K" Line, WWL and MOL price-fixed Vehicle Carrier Services on the "North American route" which is comprised of routes between ports in Japan and ports in the United States (including Puerto Rico), Canada, or Mexico. The JFTC investigated but did not fine MOL because it had stopped participating in the alleged conduct prior to a 2012 investigation of its offices, and the JFTC granted its application for leniency.

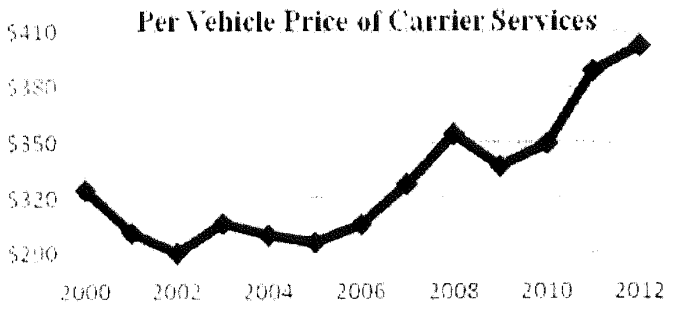
141. The EC and CCB are also part of the Vehicle Carrier Services antitrust probe. On September 6, 2012, EC officials carried out unannounced inspections at the premises of several Vehicle Carrier Services providers in a number of European Union member countries in coordination with the United States and Japanese competition authorities. The EC did so because it had reasons to believe that the companies concerned may have violated Article 101 of the Treaty on the Functioning of the European Union, which prohibits cartels and restrictive business practices.

142. On September 7, 2012, Defendant WWL confirmed that it had received requests for information from United States, Japanese, European, and Canadian competition authorities. WWL stated, "the purpose of these requests is to ascertain whether there is any evidence of any infringement of competition law related to possible price cooperation between carriers and allocation of customers."

D. Other Evidence of Collusion in the Vehicle Carrier Services Market

1. Defendants Raised Prices at a Rate that Far Exceeded Demand.

143. Prices for Vehicle Carrier Services have been generally increasing since 2006:



144. As the graph above demonstrates, pricing for Vehicle Carrier Services (per vehicle) remained relatively flat from 2001 to 2006. In 2001, the per vehicle price was approximately $301.30, while in 2006 the per vehicle price was $305.79--an increase of less than 2 percent.

145. Beginning just prior to the Class Period, the price of Vehicle Carrier Services has increased by 23 percent. This increase in the price of Vehicle Carrier Services far outpaced any increase in demand during the Class Period.

146. In the absence of an unlawful price-fixing conspiracy, according to principles of supply and demand, prices would not increase at a rate greater than the rate of demand, yet that is what happened in the Vehicle Carrier Services market during the Class Period.

VI. CLASS ACTION ALLEGATIONS

147. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the "Nationwide Class"):

> All dealers that purchased medium- and heavy-duty trucks, commercial vehicles, construction equipment, mining equipment, agricultural equipment, and other similar vehicles shipped during the Class Period by one or more of the Defendants or any current or former subsidiary or affiliate thereof or any co-conspirator.

148. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, seeking damages pursuant to the antitrust, unfair competition, and consumer protection laws of the states whose laws are set forth in the Second and Third Claims for Relief below (the "Indirect Purchaser States") and the common law of unjust enrichment on behalf of following class (the "Damages Class"):

> All dealers of medium- and heavy-duty trucks, commercial vehicles, construction equipment, mining equipment, agricultural equipment, and other similar vehicles doing business in one or more of the Indirect Purchaser States that purchased new Vehicles shipped during the Class Period by one or more of the Defendants or any current or former subsidiary or affiliate thereof or any co-conspirator.

149. The Nationwide Class and the Damages Class are referred to herein as the "Truck and Equipment Dealer Classes." Excluded from the Truck and Equipment Dealer Classes are Defendants; their parent companies, subsidiaries, and affiliates; any co-conspirators; federal governmental entities; instrumentalities of the federal government, states, and their subdivisions, agencies, and instrumentalities; and any judge assigned to hear this matter at either the district or appellate level and any employees or agents of those judges.

150. Although Plaintiffs do not know the exact number of the members of the Truck and Equipment Dealer Classes, Plaintiffs believe there are at least thousands of members in each such class.

151. Common questions of law and fact exist as to all members of the Truck and Equipment Dealer Classes. This is particularly true given the nature of Defendants' conspiracy, which was generally applicable to all the members of the Truck and Equipment Dealer Classes, thereby making relief with respect to the Truck and Equipment Dealer Classes as a whole appropriate. Such questions of law and fact common to the Truck and Equipment Dealer Classes include but are not limited to:

(a) Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain, or stabilize the prices of Vehicle Carrier Services;

(b) The identity of the participants in the alleged conspiracy;

(c) The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

(d) Whether the alleged conspiracy violated the Sherman Act, as alleged in the First Claim for Relief;

(e) Whether the alleged conspiracy violated state antitrust, unfair competition, and/or state consumer protection laws, as alleged in the Second and Third Claims for Relief;

(f) Whether Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Truck and Equipment Dealer Classes, thereby entitling Plaintiffs and the members of the Truck and Equipment Dealer Classes to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Claim for Relief;

(g) Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the members of the Truck and Equipment Dealer Classes;

(h) The effect of the alleged conspiracy on the prices of Vehicle Carrier Services to the United States from Japan, Europe, and other localities during the Class Period;

(i) Whether Plaintiffs and members of the Truck and Equipment Dealer Classes had any reason to know or suspect the conspiracy, or any means to discover the conspiracy

(j) Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from Plaintiffs and the members of the Truck and Equipment Dealer Classes;

(k) The appropriate injunctive and related equitable relief for the Nationwide Class; and

(l) The appropriate class-wide measure of damages for the Damages Class.

152. Plaintiffs' claims are typical of the claims of the members of the Truck and Equipment Dealer Classes, and Plaintiffs will fairly and adequately protect the interests of the Truck and Equipment Dealer Classes. Plaintiffs and all members of the Truck and Equipment Dealer Classes are similarly affected by Defendants' wrongful conduct because they paid artificially inflated prices for Vehicle Carrier Services purchased indirectly from Defendants and/or their co-conspirators.

153. Plaintiffs' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Truck and Equipment Dealer Classes. Plaintiffs' interests are coincident with, and not antagonistic to, those of the other members of the Truck and Equipment Dealer Classes. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

154. The questions of law and fact common to the members of the Truck and Equipment Dealer Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

155. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously,

efficiently and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism provide injured entities with a method for obtaining redress for claims that might not be practicable to pursue individually and substantially outweigh any difficulties that may arise in the management of this class action.

156. The prosecution of separate actions by individual members of the Truck and Equipment Dealer Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

VII. PLAINTIFFS AND THE TRUCK AND EQUIPMENT DEALER CLASSES SUFFERED ANTITRUST INJURY

157. Defendants' price-fixing, bid-rigging, customer allocation, and capacity-reduction conspiracies had the following effects, among others:

(a) Price competition has been restrained or eliminated with respect to Vehicle Carrier Services;

(b) The prices of Vehicle Carrier Services have been fixed, raised, maintained, or stabilized at artificially inflated levels;

(c) Defendants charged artificially inflated prices for Vehicle Carrier Servicesto purchasers of their Vehicle Carrier Services;

(d) Having paid higher prices for shipment of the trucks and equipment they sold to Plaintiffs and the Truck and Equipment Dealer Classes, firms who sold Vehicles to Plaintiffs and the Truck and Equipment Dealer Classes passed Defendants' Vehicle Carrier Services overcharges on to them in full;

(e) Defendants' overcharges passed through each level of distribution as they traveled to Plaintiffs and the Truck and Equipment Dealer Classes; and

(f) Plaintiffs and the Truck and Equipment Dealer Classes paid Defendants' artificially inflated prices for Vehicle Carrier Services, during the Class Period, as a result of the Defendants' conspiracy and have been deprived of free and open competition.

158. During the Class Period, Plaintiffs and the members of the Truck and Equipment Dealer Classes paid supra-competitive prices for Vehicle Carrier Services.

159.

160. The market for Vehicle Carrier Services and the markets for medium- and heavy-duty trucks, commercial vehicles, construction equipment, mining equipment, agricultural equipment, and other similar vehicles are inextricably linked and intertwined because the market for Vehicle Carrier Services exists to serve the Vehicle market. Without the Vehicles, Vehicle Carrier Services have little to no value because they have no independent utility. Indeed, the demand for Vehicles creates the demand for Vehicle Carrier Services.

161. Vehicle Carrier Services are identifiable, discrete services that are clearly distinguishable from the costs associated with manufacturing the Vehicle and remain unchanged when incorporated into the cost of Vehicles sold to Plaintiffs and the members of the Truck and Equipment Dealer Classes. As a result, the costs of Vehicle Carrier Services follows a traceable chain from Defendants to Plaintiffs and the members of the Truck and Equipment Dealer Classes, and any costs attributable to Vehicle Carrier Services can be traced through the chain of distribution to Plaintiffs and the members of the Truck and Equipment Dealer Classes.

162. The inflated prices of Vehicle Carrier Services resulting from Defendants' conspiracies were passed on to Plaintiffs and the members of the Truck and Equipment Dealer Classes by OEMs. Those overcharges unjustly enriched Defendants.

163. The purpose of the conspiratorial conduct of the Defendants and their coconspirators was to raise, fix, rig, or stabilize the price of Vehicle Carrier Services and, as a direct and foreseeable result, the price of new Vehicles shipped by suppliers of Vehicle Carrier Services.

164. By reason of the alleged violations of the antitrust laws, Plaintiffs and the members of the Truck and Equipment Dealer Classes have sustained injury to their businesses or property, having paid higher prices for Vehicle Carrier Services than they would have paid in the absence of Defendants' illegal contract, combination, or conspiracy and have, as a result, suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

165. Given the nature of their business, Plaintiffs and the members of the Truck and Equipment Dealer Classes absorbed a significant portion of the overcharges resulting from Defendants' illegal activities. Plaintiffs and other members of the Truck and Equipment Dealer Classes did not pass on all of the overcharges resulting from Defendants' illegal activities.

166. Plaintiffs have standing, and have suffered damages, in the states where they reside and transact business, and they and the members of the Truck and Equipment Dealer Classes they seek to represent have sustained significant damage and injury as a result of Defendants' conspiracies, illegal conduct, and unfair trade practices.

VIII. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. The Statute of Limitations Did Not Begin to Run Because Plaintiffs Did Not And Could Not Discover The Claims

167. Plaintiffs repeat and re-allege the allegations set forth in each of the foregoing paragraphs.

168. Plaintiffs and the members of the Truck and Equipment Dealer Classes had no knowledge of the combinations or conspiracies alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until shortly before the filing of this Complaint.

169. Plaintiffs and members of the Truck and Equipment Dealer Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until, at the very earliest, September 6, 2012. On that date, the JFTC and EC announced raids of the Defendants' offices for their roles in the criminal conspiracies alleged herein.

170. Plaintiffs and the members of the Truck and Equipment Dealer Classes are truck and equipment dealers who indirectly purchased Vehicle Carrier Services. They had no direct contact or interaction with any of the Defendants in this case and had no means from which they could have discovered the combination and conspiracy described in this Complaint before the public announcements of the September 6, 2012 raids.

171. No information in the public domain was available to the Plaintiffs and the members of the Truck and Equipment Dealer Classes prior to the public announcements of the September 6, 2012 raids that revealed sufficient information to suggest that any one of the Defendants was involved in criminal conspiracies to fix prices and rig bids for Vehicle Carrier Services. Plaintiffs and the members of the Truck and Equipment Dealer Classes had no means of obtaining any facts or information concerning any aspect of Defendants' dealings with OEMs or other direct purchasers, much less the fact that they had engaged in the combinations and conspiracies alleged herein.

172. For these reasons, the statute of limitations as to Plaintiffs' and the Truck and Equipment Dealer Classes' claims did not begin to run, and has been tolled with respect to the

claims that Plaintiffs and the members of the Truck and Equipment Dealer Classes have alleged in this Complaint.

B. Fraudulent Concealment Tolled the Statute of Limitations.

173. In the alternative, application of the doctrine of fraudulent concealment tolled the statute of limitations on the claims asserted herein by Plaintiffs and the Truck and Equipment Dealer Classes. Plaintiffs and the members of the Truck and Equipment Dealer Classes did not discover, and could not discover through the exercise of reasonable diligence, the existence of the conspiracies alleged herein until the September 6, 2012 raids.

174. Because Defendants' agreements, understandings, and conspiracies were kept secret until September 6, 2012, Plaintiffs and members of the Truck and Equipment Dealer Classes were unaware of Defendants' unlawful conduct before that time, and they did not know before then that they were paying supra-competitive prices for Vehicle Carrier Services. No information, actual or constructive, was ever made available to Plaintiffs or to the members of the Truck and Equipment Dealer Classes that revealed Defendants' unlawful conduct, or the injuries caused thereby, to Plaintiffs or to the members of the Truck and Equipment Dealer Classes.

175. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracies, were wrongfully concealed and carried out in a manner that precluded detection.

176. By its very nature, Defendants' anticompetitive conspiracies and unlawful combinations were inherently self-concealing. Defendants met and communicated in secret and agred to keep the facts about their collusive conduct from being discovered others, including by any member of the public or by the OEMs and other direct purchasers with whom they did business.

177. The conspiracies were self-concealing and affirmatively concealed by Defendants and their co-conspirators. Plaintiffs and members of the Truck and Equipment Dealer Classes could not have discovered the Defendants' conspiracies at a date prior to September 6, 2012 by the exercise of reasonable diligence because the Defendants and their co-conspirators employed tactics of secrecy and deceptive practices to avoid the detection of, and to fraudulently conceal, their illegal conduct.

178. Defendants affirmatively concealed their conspiracies by falsely claiming that the Vehicle Carrier Services market was competitive and by creating the illusion that prices in that market were rising as a result of increased demand and tight supply, rather than due to Defendants' illegal conduct. Examples of such statements can be found in the 2003, 2006, 2007, 2008, 2009, 2010, and 2011 Annual Reports of CSAV, the 2008 and 2009 Annual Reports of "K" Line, the 2009 and 2012 Annual Report of NYK, and the 2009 and 2010 Annual Reports of Wil. Wilhelmsen ASA,

179. As a result of Defendants' fraudulent concealment of their conspiracies, the running of any statute of limitations has been tolled with respect to any claims that Plaintiffs and the members of the Truck and Equipment Dealer Classes have alleged in this Complaint and did not begin to run until September 6, 2012.

IX. FIRST CLAIM FOR RELIEF
VIOLATION OF SECTION 1 OF THE SHERMAN ACT
(ON BEHALF OF PLAINTIFFS AND THE NATIONWIDE CLASS)

180. Plaintiffs repeat and re-allege the allegations set forth in each of the foregoing paragraphs.

181. Defendants and unnamed conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

182. The acts done by each of the Defendants as part of, and in furtherance of, their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

183. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding, and conspiracy in restraint of trade to artificially fix, raise, stabilize, and control prices for Vehicle Carrier Services, thereby creating anticompetitive effects.

184. The anticompetitive acts were intentionally directed at the market for Vehicle Carrier Services to and from the United States and had a substantial and foreseeable effect on interstate commerce by raising and fixing prices for Vehicle Carrier Services throughout the United States.

185. The conspiratorial acts and combinations have caused unreasonable restraints in the market for Vehicle Carrier Services.

186. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased Vehicles shipped by Defendants have been harmed by being forced to pay inflated, supracompetitive prices for Vehicle Carrier Services.

187. In formulating and carrying out the alleged agreement, understanding, and conspiracy. Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth herein.

188. Defendants' conspiracy had the following effects, among others:

(a) Price competition in the market for Vehicle Carrier Services was restrained, suppressed, and/or eliminated in the United States;

(b) Prices for Vehicle Carrier Services provided by Defendants and their co-conspirators were fixed, raised, maintained, and stabilized at artificially high, noncompetitive levels throughout the United States;

(c) Prices for Vehicles purchased by Plaintiffs and the members of the Nationwide Class and shipped by Defendants and their coconspirators were inflated; and

(d) Plaintiffs and members of the Nationwide Class who purchased Vehicles shipped by Defendants and indirectly paid Defendants for Vehicle Carrier Services have been deprived of the benefits of free and open competition.

189. Plaintiffs and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for Vehicle Carrier Services than they would have paid and will pay in the absence of the conspiracy.

190. Plaintiffs and members of the Nationwide Class will continue to be subject to Defendants' price-fixing, bid-rigging, and market allocations, and/or the market effects thereof, which will deprive Plaintiffs and members of the Nationwide Class of the benefits of free competition, including competitively-priced Vehicle Carrier Services.

191. Plaintiffs and members of the Nationwide Class will continue to lose funds due to overpayment for Vehicle Carrier Services because they are required to purchase Vehicles that are imported on RoRos owned and operated by Defendants and their co-conspirators to continue to operate their businesses.

192. Plaintiffs and members of the Nationwide Class continue to purchase vehicles that are imported on RoRos owned and operated by Defendants and their co-conspirators, on a regular basis, and to pay fees for Vehicle Carrier Services.

193. Defendants and their co-conspirators continue to charge fees for their Vehicle Carrier Services that are inflated, fixed, and maintained by their conspiracy.

194. The alleged contract, combination, or conspiracy is a *per se* violation of the federal antitrust laws.

195. Plaintiffs and members of the Nationwide Class will be at the mercy of Defendants' unlawful conduct until the Court orders an injunction.

196. Plaintiffs and members of the Nationwide Class are entitled to an injunction against Defendants preventing and restraining the violations alleged herein.

X. SECOND CLAIM FOR RELIEF
VIOLATION OF STATE ANTITRUST STATUTES
(ON BEHALF OF PLAINTIFFS AND THE DAMAGES CLASS)

197. Plaintiffs repeat and re-allege the allegations set forth in each of the foregoing paragraphs.

198. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination, or conspiracy with respect to Vehicle Carrier Services in unreasonable restraint of trade and commerce and in violation of the various state antitrust statutes set forth below.

199. The contract, combination, or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, inflate, stabilize and/or maintain artificially supra-competitive prices for Vehicle Carrier Services, to rig bids for the Vehicle Carrier Services, and to allocate customers for Vehicle Carrier Services in the United States.

200. In formulating and effectuating this conspiracy, Defendants and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

(a) participating in meetings and conversations among themselves in the United States and elsewhere during which they agreed to price Vehicle Carrier Services at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid for Vehicle Carrier Services sold and/or provided in the United States;

(b) allocating customers and markets for Vehicle Carrier Services in the United States in furtherance of their agreements; and

(c) participating in meetings and conversations among themselves in the United States and elsewhere to implement, adhere to, and police the unlawful agreements they reached.

201. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, maintain, decrease, or stabilize prices and to allocate customers with respect to Vehicle Carrier Services.

202. Defendants' anticompetitive acts described above were knowing, willful, and constitute violations or flagrant violations of the following state antitrust statutes.

203. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Arizona; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of

the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants entered into agreements in restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq*.

204. Defendants have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq*.

(a) During the Class Period, Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Section 16720 of the California Business and Professions Code. Defendants, each of them, have acted in violation of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, Vehicle Carrier Services.

(b) The aforesaid violations of Section 16720, California Business and Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the Defendants and their co-conspirators the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and to allocate markets for, Vehicle Carrier Services.

(c) For the purpose of forming and effectuating the unlawful trust, the Defendants and their co-conspirators have done those things which they combined and conspired to do, including but in no way limited to the acts, practices, and course of conduct set forth above and the following: (1) Fixing, raising, stabilizing, and pegging the price of Vehicle Carrier Services; and (2) Allocating among themselves the provision of Vehicle Carrier Services.

(d) The combination and conspiracy alleged herein has had, *inter alia*, the following effects upon the commerce of California: (1) Price competition in the sale of Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the State of California; (2) Prices for Vehicle Carrier Services sold by Defendants and their co-conspirators have been fixed, raised, stabilized, and pegged at artificially high, non-competitive levels in the State of California and throughout the United States; and (3) Those who purchased Vehicle Carrier Services from Defendants and their co-conspirators, directly or indirectly, have been deprived of the benefit of free and open competition.

(e) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property in that they paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a result of Defendants' violation of Section 16720 of the California Business and Professions Code, Plaintiffs and members of the Damages Class seek treble damages and their cost of suit, including a reasonable attorney's fee, pursuant to Section 16750(a) of the California Business and Professions Code.

205. Defendants have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Official Code §§ 28-4501, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout the District of Columbia; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased Vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in the District of Columbia; and (4) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased Vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in the District of Columbia.

(b) During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

206. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq.*

(a) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Hawaii; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Hawaii Revised Statutes Annotated §§ 480-4, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Hawaii Revised Statutes Annotated §§ 480-4, *et seq*.

207. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code §§ 553.1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Iowa; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Iowa commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Iowa Code §§ 553.1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Iowa Code §§ 553.1, *et seq*.

208. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Kansas; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Kansas commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq*.

209. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Maine; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Maine commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10. §§ 1101, *et seq*.

210. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Michigan Compiled Laws Annotated §§ 445.771, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Michigan; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Michigan; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Michigan commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp. Laws Ann. §§ 445.771, *et seq*.

211. Defendants have entered into an unlawful agreement in unreasonable restraint of trade in violation of the Minnesota Statutes Annotated §§ 325D.49, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Minnesota; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and

stabilized at artificially high levels throughout Minnesota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period Defendants' illegal conduct substantially affected Minnesota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq*.

212. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Mississippi Code Annotated §§ 75-21-1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Mississippi; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Mississippi; (3) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Vehicles in Mississippi that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in Mississippi; and (4) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Vehicles in Mississippi that

were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in Mississippi.

(b) During the Class Period, Defendants' illegal conduct substantially affected Mississippi commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq*.

213. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nebraska Revised Statutes §§ 59-801, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Nebraska; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Nebraska; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Nebraska commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq*.

214. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Nevada; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class, including those who resided in Nevada and/or purchased Vehicles in Nevada that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in Nevada; and (4) Plaintiffs and members of the Damages Class, including those who resided in Nevada and/or purchased Vehicles in Nevada that were shipped by Defendants or their coconspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in Nevada.

(b) During the Class Period, Defendants' illegal conduct substantially affected Nevada commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A.060, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. §§ 598A.010, *et seq*.

215. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes §§ 356:1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout New Hampshire; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period Defendants' illegal conduct substantially affected New Hampshire commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq*. Accordingly,

Plaintiffs and members of the Damages Class seek all relief available under New Hampshire Revised Statutes §§ 356:1, *et seq*.

216. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Mexico Statutes Annotated §§ 57-1-1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout New Mexico; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Mexico Stat. Ann.§§ 57-1-1, *et seq*.

217. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws §§ 340, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout New York; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class, including those who resided in New York and/or purchased Vehicles in New York that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in New York; and (4) Plaintiffs and members of the Damages Class, including those who resided in New York and/or purchased Vehicles in New York that were shipped by Defendants or their coconspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in New York, when they purchased Vehicles transported by Defendants, or purchased products that were otherwise of lower quality, than would have been absent the Defendants' illegal acts, or were unable to purchase products or Vehicles that they would have otherwise have purchased absent the illegal conduct.

(b) During the Class Period, Defendants' illegal conduct substantially affected New York commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq*. The conduct set forth above is a *per se* violation of the Act. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New York Gen. Bus. Law §§ 340, *et seq*.

218. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes §§ 75-1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout North Carolina; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Vehicles in North Carolina that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in North Carolina; and (4) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Vehicles in North Carolina that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in North Carolina.

(b) During the Class Period, Defendants' illegal conduct substantially affected North Carolina commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(c) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Carolina Gen. Stat. §§ 75-1, *et seq*.

219. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Dakota Century Code §§ 51-08.1-01, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout North Dakota; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on North Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Dakota Cent. Code §§ 51-08.1-01, *et seq*.

220. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Oregon Revised Statutes §§ 646.705, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Oregon; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of

the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period Defendants' illegal conduct had a substantial effect on Oregon commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq.*

221. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws §§ 37-1-3.1., *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout South Dakota; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased Vehicles in South Dakota that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in South Dakota; and (4) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased Vehicles in South Dakota that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in South Dakota.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et seq*.

222. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated §§ 76-10-911, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Utah; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Utah commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Utah Code Annotated §§ 76-10-911, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Utah Code Annotated §§ 76-10-911, *et seq*.

223. Defendants have entered into an unlawful agreement in restraint of trade in violation of the 9 Vermont Stat. Ann. §§ 2451, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Vermont; (2) prices Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period Defendants' illegal conduct had a substantial effect on Vermont commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 9 Vermont Stat. Ann. §§ 2451, *et seq*. Plaintiffs are entitled to relief pursuant to 9 Vermont Stat. Ann. § 2465 and any other applicable authority. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under 9 Vermont Stat. Ann. §§ 2451, *et seq*.

224. Defendants have entered into an unlawful agreement in restraint of trade in violation of the West Virginia Code §§ 47-18-1, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout West Virginia; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout West Virginia; (3) Plaintiffs and members of the Damages Class, including those who resided in West Virginia and/or purchased Vehicles in West Virginia that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in West Virginia; and (4) Plaintiffs and members of the Damages Class, including those who resided in West Virginia and/or purchased Vehicles in West Virginia that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in West Virginia.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on West Virginia commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of West Virginia §§ 47-18-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under West Virginia §§ 47-18-1, *et seq*.

225. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Wisconsin Statutes §§ 133.01, *et seq*.

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Wisconsin; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Wisconsin; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period Defendants' illegal conduct had a substantial effect on Wisconsin commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Wisconsin Stat. §§ 133.01, *et seq*.

226. Plaintiffs and members of the Damages Class in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy, and agreement. Plaintiffs and members of the Damages Class have paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

227. In addition, Defendants have profited significantly from the aforesaid conspiracy. Defendants' profits derived from their anticompetitive conduct come at the expense and detriment of the Plaintiffs and the members of the Damages Class.

228. Accordingly, Plaintiffs and the members of the Damages Class in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

XI. THIRD CLAIM FOR RELIEF
VIOLATION OF STATE CONSUMER PROTECTION STATUTES
(ON BEHALF OF PLAINTIFFS AND THE DAMAGES CLASS)

229. Plaintiffs repeat and re-allege the allegations set forth in each of the foregoing paragraphs.

230. Defendants knowingly engaged in unlawful, unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

231. Defendants have knowingly entered into an unlawful agreement in restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101.

(a) Defendants knowingly agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Arkansas and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) The aforementioned conduct on the part of the Defendants constituted "unconscionable" and "deceptive" acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10).

(c) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Arkansas; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Arkansas; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(d) During the Class Period, Defendants' illegal conduct substantially affected Arkansas commerce and consumers.

(e) As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

(f) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

232. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of California Business and Professions Code § 17200, *et seq*.

(a) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in California, and committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq*. of the California Business and Professions Code, by engaging in the acts and practices specified above.

(b) During the Class Period, Defendants' illegal conduct substantially affected California commerce and consumers.

(c) This claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged herein, that violated Section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Law.

(d) The Defendants' conduct as alleged herein violated Section 17200. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200, *et seq*., including, but not limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set forth above; (2) the violations of Section 16720, *et seq*., of the California Business and Professions Code, set forth above.

(e) Defendants' acts, omissions, misrepresentations, practices, and nondisclosures, as described above, whether or not in violation of Section 16720, *et seq*., of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent.

(f) Defendants' acts or practices are unfair to purchasers of Vehicle Carrier Services, and of the Vehicles transported by them, in the State of California within the meaning of Section 17200, California Business and Professions Code.

(g) Defendants' acts and practices are fraudulent and/or deceptive within the meaning of Section 17200 of the California Business and Professions Code, and the conduct of Defendants as alleged in this Complaint violates Section 17200 of the California Business and Professions Code.

(h) Plaintiffs and members of the Damages Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that were obtained by Defendants as a result of such business acts and practices.

(i) The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

(j) The unlawful and unfair business practices of Defendants, and each of them, as described above, have caused and continue to cause Plaintiffs and the members of the Damages Class to pay supra-competitive and artificially-inflated prices for Vehicle Carrier Services and for Vehicles transported by them. Plaintiffs and the members of the Damages Class suffered injury in fact and lost money or property as a result of such unfair competition.

(k) As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs and the members of the Damages Class accordingly are entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

233. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq*.

(a) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Florida; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at

artificially high levels throughout Florida; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Shipping Services; and (5) Reasonable purchasers in Florida were deceived into believing that they were paying competitive prices for their Vehicles and Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Florida commerce and consumers.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unlawful, unfair or deceptive acts or practices in violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

234. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Massachusetts Gen. Laws, Ch 93A, § 1 *et seq.*

(a) Defendants were engaged in trade or commerce as defined by G.L. 93A. Defendants, in a market that includes Massachusetts, agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Massachusetts and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) The aforementioned conduct on the part of the Defendants constituted "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce," in violation of Massachusetts Gen. Laws, Ch 93 A, § 2, 11.

(c) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Massachusetts; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(d) During the Class Period, Defendants' illegal conduct substantially affected Massachusetts commerce and consumers.

(e) As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

(f) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Massachusetts Gen. Laws, Ch 93A, §§ 2, 11, that were knowing or willful and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute, including multiple damages.

235. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code §§ 30-14-201, *et seq.*

(a) Defendants' unlawful conduct had the following effects: (1) Vehicle Shipping price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Montana; (2) prices for Vehicle Shipping Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Shipping Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Montana commerce and consumers.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

(d) Accordingly, Plaintiffs and members of the Damages Class seek all relief available under the Montana Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code §§ 30-14-201, *et. seq.*

236. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq*.

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) The aforementioned conduct on the part of Defendants constituted "unconscionable trade practices," in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the member of the Damages Class and the prices paid by them for Vehicle Carrier Services as set forth in N.M.S.A., § 57-12-2E. Plaintiffs were not aware of Defendants' price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for Vehicle Carrier Services. Defendants had the sole power to set that price, and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing Vehicle Carrier Services because they were unaware of the unlawful overcharge and because there was no alternative source of supply of Vehicles through which Plaintiffs could avoid the overcharges. Defendants' conduct with regard to sales of Vehicle Carrier Services, including their illegal conspiracy to secretly fix the price of Vehicle Carrier Services at supra-competitive levels and overcharge Plaintiffs and the Damages Class, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs, the members of the Damages Class, and the public. Defendants took grossly unfair advantage of Plaintiffs.

(c) The aforementioned conduct on the part of the Defendants constituted "unconscionable trade practices," in violation of N.M.S.A. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for the Vehicle Carrier Services as set forth in N.M.S.A. § 57-12-2E, due to the inflated prices paid by Plaintiffs and Class members for the Vehicles and the Vehicle Carrier Services.

(d) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout New Mexico; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(e) During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce and consumers.

(f) As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

(g) Accordingly, Plaintiffs and the members of the Damages Class seek all relief available under New Mexico Stat. § 57-12-1, *et seq.*.

237. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in New York and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) Defendants and their co-conspirators made public statements about the prices of Vehicle Carrier Services that either omitted material information that rendered the statements materially misleading or affirmatively misrepresented the real cause of price increases

for Vehicle Carrier Services, and Defendants alone possessed material information that was relevant to Plaintiffs and the Damages Class but failed to provide that information to Plaintiffs and the Damages Class.

(c) Because of Defendants' unlawful trade practices in the State of New York, New York purchasers who indirectly purchased Vehicle Carrier Services were misled to believe that they were paying a fair price for Vehicle Carrier Services or the price increases for Vehicle Carrier Services were for valid business reasons; and similarly situated purchasers were potentially affected by Defendants' conspiracy.

(d) Defendants knew that their unlawful trade practices with respect to Vehicle Carrier Services would have an impact on New York-based members of the Damages Class, and not just on Defendants' direct customers.

(e) Defendants knew that their unlawful trade practices with respect to Vehicle Carrier Services would have a broad impact, causing members of the Damages Class who indirectly purchased Vehicle Carrier Services to be injured by paying more for Vehicle Carrier Services than they would have paid in the absence of Defendants' unlawful trade acts and practices.

(f) The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in injuries to purchasers and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner.

(g) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout

New York; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(h) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in New York, and Defendants' illegal conduct substantially affected New York commerce and New York purchasers.

(i) During the Class Period, each of the Defendants named herein directly, or indirectly and through affiliates it dominated and controlled, sold and/or distributed Vehicle Carrier Services in New York.

(j) Plaintiffs and members of the Damages Class seek all relief available pursuant to N.Y. Gen. Bus. Law § 349(h).

238. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq*.

(a) Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in North Carolina and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) Defendants' conspiracy to fix prices, allocate customers, rig bids, and artificially suppress supply of Vehicle Carrier Services could not have succeeded absent deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation, implementation, and maintenance of Defendants' conspiracy. Defendants committed inherently deceptive and self-concealing actions, of which Plaintiffs and members of the

Damages Class could not possibly have been aware. Defendants and their co-conspirators publicly provided false justifications regarding their price increases. Defendants' public statements concerning the price of Vehicle Carrier Services created the illusion of competitive pricing controlled by market forces, rather than supra-competitive pricing driven by Defendants' illegal conspiracy. Moreover, Defendants deceptively concealed their unlawful activities by mutually agreeing not to divulge the existence of their conspiracy to outsiders.

(c) The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer injury and broad adverse impact on the public at large and harmed the public interest of the North Carolina-based Plaintiff and members of the Damages Class in having access to an honest marketplace in which economic activity is conducted in a competitive manner.

(d) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout North Carolina; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Vehicles in North Carolina that were shipped by Defendants or their co-conspirators, were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(e) During the Class Period, Defendants marketed, sold, and/or distributed Vehicle Carrier Services in North Carolina, and Defendants' illegal conduct substantially affected North Carolina commerce and consumers.

(f) During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, marketed, sold and/or distributed Vehicle Carrier Services in North Carolina.

(g) Plaintiffs and members of the Damages Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

239. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout South Carolina; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Ann. §§ 39-5-10, *et seq.*, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

240. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Vermont.

(b) Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Vehicle Carrier Services. Defendants owed a duty to disclose such facts, and Defendants breached that duty by their silence. Defendants misrepresented to all purchasers—both direct and indirect—of Vehicle Carrier Services during the Class Period that Defendants' prices for Vehicle Carrier Services were competitive and fair.

(c) Defendants' unlawful conduct had the following effects: (1) price competition for Vehicle Carrier Services was restrained, suppressed, and eliminated throughout Vermont; (2) prices for Vehicle Carrier Services were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(d) As a direct and proximate result of the Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property

as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.

(e) Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of Vehicle Carrier Services, likely misled all purchasers—both direct and indirect—acting reasonably under the circumstances to believe that they were purchasing Vehicle Carrier Services at prices set by a free and fair market. Defendants' misleading conduct and unconscionable activities constitute unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

XII. FOURTH CLAIM FOR RELIEF UNJUST ENRICHMENT (ON BEHALF OF PLAINTIFFS AND THE DAMAGES CLASS)

241. Plaintiffs repeat and re-allege the allegations set forth in each of the foregoing paragraphs.

242. Plaintiffs bring this claim under the laws of all states listed in the Second and Third Claims for Relief above.

243. As a result of their unlawful conduct described above and their violations of the antitrust and consumer protection laws set forth above, Defendants have and will continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on sales of Vehicle Carrier Services.

244. Defendants have benefited from their unlawful acts, and it would be inequitable for Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments made by Plaintiffs or the members of the Damages Class for Vehicle Carrier Services.

245. Plaintiffs and the members of the Damages Class are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct. Plaintiffs and the members of the Damages Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and the members of the Damages Class may make claims on a *pro rata* basis.

246. Pursuit of any remedies against the firms from whom Plaintiffs and the members of the Damages Class directly purchased Vehicles shipped by Defendants during the Class Period would have been futile because those firms did not take part in Defendants' conspiracy.

PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request that:

1. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Truck and Equipment Dealer Classes;

2. The unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

(a) An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

(b) A *per se* violation of Section 1 of the Sherman Act;

(c) An unlawful combination, trust, agreement, understanding, and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and

(d) Acts of unjust enrichment by Defendants as set forth herein.

3. Plaintiffs and the members of the Damages Class be awarded damages to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and the members of the Damages Class be entered against Defendants in an amount to be trebled or otherwise enhanced to the extent such laws permit;

4. Plaintiffs and the members of the Damages Class be awarded damages to the maximum extent allowed by such laws in the form of restitution and/or disgorgement of profits unlawfully gained from them;

5. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining, or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

6. Plaintiffs and the members of the Damages Class be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment;

7. Plaintiffs and the members of the Truck and Equipment Dealer Classes be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this Complaint;

8. Plaintiffs and the members of the Truck and Equipment Dealer Classes be awarded their costs of suit, including reasonable attorneys' fees, as provided by law; and

9. Plaintiffs and members of the Truck and Equipment Dealer Classes be granted such other and further relief as the case may require and the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

Dated: July 15, 2014

Respectfully submitted,

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FILED UNDER SEAL

UNITED STATES DISTRICT COURT
THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE

IN RE: VEHICLE CARRIER SERVICES **ANTITRUST LITIGATION** THIS DOCUMENT RELATES TO: *All Automobile Dealer Actions*	Master Docket No. 13-cv-3306 (ES) (JAD) (MDL No. 2471) CONSOLIDATED AMENDED CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

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Plaintiff Martens Cars of Washington, Inc. ("Plaintiff Martens"); Hudson Charleston Acquisition, LLC d/b/a Hudson Nissan ("Plaintiff Hudson Nissan"); John O'Neil Johnson Toyota, LLC ("Plaintiff Johnson"); Hudson Gastonia Acquisition, LLC ("Gastonia Nissan"); HC Acquisition, LLC d/b/a Toyota of Bristol ("Bristol Toyota"); Desert European Motorcars, Ltd ("Plaintiff Desert"); Hodges Imported Cars, Inc. d/b/a Hodges Subaru ("Plaintiff Hodges"); Scotland Car Yard Enterprises d/b/a San Rafael Mitsubishi ("Plaintiff San Rafael"); Hartley Buick/GMC Truck, Inc. d/b/a Hartley Honda ("Plaintiff Hartley"); Panama City Automotive Group, Inc. d/b/a John Lee Nissan ("Plaintiff John Lee"); and Empire Nissan of Santa Rosa, LLC ("Plaintiff Empire Nissan") (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated (the "Auto Dealer Classes" as defined below), upon personal knowledge as to the facts pertaining to themselves and upon information and belief as to all other matters, and based on the investigation of counsel, brings this class action for damages, injunctive relief, and other relief pursuant to federal antitrust laws; state antitrust, unfair competition, and consumer protection laws; and the common law of unjust enrichment, demand a trial by jury, and allege as follows:

I. NATURE OF ACTION

1. This lawsuit is brought as a proposed class action against Defendants Nippon Yusen Kabushiki Kaisha ("NYK"); NYK Line (North America) Inc.

("NYK America"); Mitsui O.S.K. Lines, Ltd. ("MOL"); Mitsui O.S.K. Bulk Shipping (USA), Inc. ("MOL USA"); World Logistics Service (USA) Inc. ("WLS"); Höegh Autoliners AS; Höegh Autoliners AS ("Höegh"); Kawasaki Kisen Kaisha, Ltd. ("'K' Line"); "K" Line America, Inc. (""K" Line America"); Wallenius Wilhelmsen Logistics AS ("WWL"); Wallenius Wilhelmsen Logistics Americas LLC ("WWL Americas"); EUKOR Car Carriers Inc. ("EUKOR"); Compañía Sud Americana De Vapores S.A. ("CSAV"); and CSAV Agency North America, LLC ("CSAV North America") (all as defined below, and collectively the "Defendants"), and unnamed co-conspirators, providers of Vehicle Carrier Services (defined below) globally and in the United States, for engaging in at least a five-year-long conspiracy to fix, raise, maintain, and/or stabilize prices and allocate the market and customers in the United States for Vehicle Carrier Services.

2. "Vehicle Carriers" transport large numbers of cars, trucks, or other new, assembled motor vehicles including agriculture and construction equipment (collectively "Vehicles") across large bodies of water using specialized cargo ships known as Roll-On/Roll-Off vessels ("RoRos"). As used herein, "Vehicle Carrier Services" refers to the paid ocean transportation of Vehicles by RoRo.

3. Plaintiffs seek to represent all automobile dealers in approximately 30 states who indirectly purchased from any Defendant, or any current or former

subsidiary or affiliate thereof or any co-conspirator, Vehicle Carrier Services incorporated into the price of new Vehicles purchased during the period from and including January1, 2000 through such time as the anticompetitive effects of Defendants' conduct ceased (the "Class Period").

4. Defendants provide, market, and/or sell Vehicle Carrier Services throughout the United States.

5. Defendants, and their co-conspirators (as yet unknown), agreed, combined, and conspired to fix, raise, maintain, and/or stabilize prices and allocate the market and customers for Vehicle Carrier Services in unreasonable restraint of the foreign commerce of the United States.

6. Competition authorities in the United States, the European Union, Canada, and Japan have been investigating a possible global cartel among Vehicle Carriers since at least September 2012. Both the United States Department of Justice's Antitrust Division ("DOJ") and Canada's Competition Bureau ("CCB") are investigating unlawful, anticompetitive conduct in the market for ocean shipping of cars, trucks, construction equipment, and other products. The Japanese Fair Trade Commission ("JFTC") and European Commission Competition Authority ("EC") have also conducted coordinated dawn raids at the Tokyo and European offices of several of the Defendants.

7. On February 27, 2014, the DOJ announced that Defendant CSAV agreed to plead guilty and pay an $8.9 million criminal fine for price-fixing Vehicle Carrier Services to and from the United States and elsewhere. Plaintiffs, based upon their experience in civil antitrust litigation following from antitrust prosecutions by the DOJ, believe it likely that the one of the defendants is a so-called "amnesty applicant" pursuant to the DOJ's leniency program. A participant in an antitrust cartel is only eligible for participation in this program if it self-reports its cartel behavior to the DOJ and is only entitled to the reduced damages provisions of the Antitrust Criminal Penalties Enhancement Reform Act if it provides full and timely cooperation to the victims of the cartel.

8. On March 19, 2014, the JFTC announced it issued cease and desist orders and surcharge payment orders totaling more than $233 million against Defendants NYK, "K" Line, Nissan Motor Car Carrier Co., and WWL for price-fixing Vehicle Carrier Services. NYK and Wilhelmsen Logistics AS control about 70 percent of the global market for carrying cars.

9. Defendants and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the Vehicle Carrier Services market by agreeing to fix, raise, stabilize, and/or maintain the prices of and allocate the market and customers for Vehicle Carrier Services sold to automobile manufacturers in the United States and elsewhere for the import and

export of new, assembled motor Vehicles to and from the United States. The combination and conspiracy engaged in by Defendants and their co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1; state antitrust, unfair competition, and consumer protection laws; and the common law of unjust enrichment.

10. As a direct result of the anticompetitive and unlawful conduct alleged herein, Plaintiffs and the Auto Dealer Classes paid artificially inflated prices for Vehicle Carrier Services incorporated into the price of new Vehicles purchased during the Class Period in the United States and have thereby suffered antitrust injury to their business or property. Plaintiffs did not purchase any Vehicles through a foreign-based subsidiary or agent.

II. JURISDICTION AND VENUE

11. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to secure equitable and injunctive relief against Defendants for violating Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also assert claims for actual and exemplary damages pursuant to state antitrust, unfair competition, and consumer protection laws, and the common law of unjust enrichment, and seek to obtain restitution, recover damages, and secure other relief against the Defendants for violations of those state laws and common law.

Plaintiffs and the Auto Dealer Classes also seek attorneys' fees, costs, and other expenses under federal and state law.

12. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1), and 28, U.S.C. §§ 1331 and 1337.

13. This Court has subject matter and supplemental jurisdiction of the state law claims pursuant to 28 U.S.C. §§ 1332(d) and 1367, in that (i) this is a class action in which the matter or controversy exceeds the sum of $5,000,000, exclusive of interests and costs, and in which some members of the proposed Auto Dealer Classes are citizens of a state different from some of the Defendants; and (ii) Plaintiffs' state law claims form part of the same case or controversy as their federal claims under Article III of the United States Constitution.

14. Venue is proper in this district pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22) and 28 U.S.C. §§ 1391 (b), (c), and (d) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the affected interstate trade and commerce discussed below has been carried out in this District, and one or more of the Defendants reside, are licensed to do business in, are doing business in, had agents in, or are found or transact business in this District.

15. This Court has *in personam* jurisdiction over the Defendants because each, either directly or through the ownership and/or control of its subsidiaries, *inter alia*: (a) transacted business in the United States, including in this District; (b) directly or indirectly sold or marketed Vehicle Carrier Services throughout the United States, including in this District; (c) had substantial aggregate contacts with the United States as a whole, including in this District; (d) were engaged in an illegal price-fixing conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable, and intended effect of causing injury to, the business or property of persons and entities residing in, located in, or doing business throughout the United States, including in this District; and/or (e) engaged in actions in furtherance of an illegal conspiracy in this District either itself or through its co-conspirators. Defendants also conduct business throughout the United States, including in this District, and they have purposefully availed themselves of the laws of the United States.

16. Defendants engaged in conduct both inside and outside of the United States that caused direct, substantial, and reasonably foreseeable and intended anticompetitive effects upon interstate commerce within the United States.

17. The activities of Defendants and their co-conspirators were within the flow of, were intended to, and did have a substantial effect on interstate commerce

of the United States. Defendants' Vehicle Carrier Services are sold in the flow of interstate commerce.

18. Vehicles, the prices of which include Vehicle Carrier Services, transported from abroad by the Defendants and sold for use within the United States are goods brought into the United States for sale and therefore constitute import commerce. To the extent any such Vehicles and the related Vehicle Carrier Services are purchased in the United States, and such Vehicles or Vehicle Carrier Services do not constitute import commerce, Defendants' unlawful activities during the Class Period with respect thereto, as more fully alleged herein, had, and continue to have, a direct, substantial, and reasonably foreseeable effect on United States commerce. The anticompetitive conduct, and its effect on United States commerce described herein, proximately caused antitrust injury to Plaintiffs and members of the Auto Dealer Classes in the United States.

19. By reason of the unlawful activities hereinafter alleged, Defendants substantially affected commerce throughout the United States, causing injury to Plaintiffs and members of the Auto Dealer Classes. Defendants, directly and through their agents, engaged in activities affecting all states, to fix, raise, maintain, and/or stabilize prices, and allocate the market and customers in the United States for Vehicle Carrier Services, which conspiracy unreasonably restrained trade and adversely affected the market for Vehicle Carrier Services.

20. Defendants' conspiracy and unlawful conduct described herein adversely affected automobile dealers in the United States who purchased new Vehicles for resale, including Plaintiffs and the members of the Auto Dealer Classes.

III. PARTIES

A. Plaintiffs

21. Plaintiff Martens is a Maryland corporation whose principal place of business was in the District of Columbia. Plaintiff Martens was, at all times during the Class Period, an authorized Volvo and Volkswagen dealer that bought and then sold Volvo- and Volkswagen-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

22. During the Class Period, Plaintiff Martens purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Plaintiff Martens purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in the District of Columbia. Plaintiff Martens also displayed, sold, serviced, and advertised its Vehicles in the District of Columbia during the Class Period.

23. Plaintiff Hudson Nissan is a South Carolina limited liability company with its principal place of business in North Charleston, South Carolina. Plaintiff

Hudson Nissan is an authorized Nissan dealer that buys and then sells Nissan-brand cars that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

24. During the Class Period, Plaintiff Hudson Nissan purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Plaintiff Hudson Nissan purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in South Carolina. Plaintiff Hudson Nissan has also displayed, sold, serviced, and advertised its Vehicles in South Carolina during the Class Period.

25. Plaintiff Gastonia Nissan is a North Carolina limited liability company with its principal place of business in Gastonia, North Carolina. Plaintiff Gastonia Nissan an authorized Nissan dealer who buys and then sells Nissan-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

26. During the Class Period, Plaintiff Gastonia Nissan purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Gastonia Nissan purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in North Carolina. Plaintiff Johnson has also displayed, sold, serviced, and advertised its Vehicles in North Carolina during the Class Period.

27. Plaintiff Johnson is a Mississippi limited liability company with its principal place of business in Meridian, Mississippi. Plaintiff Johnson is an authorized Toyota dealer who buys and then sells Toyota-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

28. During the Class Period, Plaintiff Johnson purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Johnson purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Mississippi. Plaintiff Johnson has also displayed, sold, serviced, and advertised its Vehicles in Mississippi during the Class Period.

29. Plaintiff Bristol is a Tennessee limited liability company with its principal place of business in Bristol, Tennessee. Plaintiff Bristol is an authorized Toyota dealer, who buys and then sells Toyota-brand cars that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

30. During the Class Period, Plaintiff Bristol purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Bristol purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Tennessee. Plaintiff Bristol has also displayed, sold, serviced, and advertised its Vehicles in Tennessee during the Class Period.

31. Plaintiff Desert is a California company with its principal place of business in Rancho Mirage, California. Plaintiff Desert is an authorized Rolls Royce, Bentley, Aston Martin, Maserati, Porsche, Jaguar, Land Rover, Audi, Lotus, and Spyker dealer who buys and then sells Rolls Royce-, Bentley-, Aston Martin-, Maserati-, Porsche-, Jaguar-, Land Rover-, Audi-, Lotus-, and Spyker-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

32. During the Class Period, Plaintiff Desert purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Desert purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in California. Plaintiff Desert has also displayed, sold, serviced, and advertised its Vehicles in California during the Class Period.

33. Plaintiff Hodges Subaru is a Michigan corporation with its principal place of business in Ferndale, Michigan. Plaintiff Hodges is an authorized dealer of Subaru-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

34. During the Class Period, Plaintiff Hodges purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Hodges purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier

Services in Michigan. Plaintiff Hodges has also displayed, sold, serviced, and advertised its Vehicles in Michigan during the Class Period.

35. Plaintiff San Rafael is a California corporation with its principal place of business in San Rafael, California. Plaintiff San Rafael is an authorized dealer of Mitsubishi-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

36. During the Class Period, Plaintiff San Rafael purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff San Rafael purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in California. Plaintiff San Rafael has also displayed, sold, serviced, and advertised its Vehicles in California during the Class Period.

37. Plaintiff Hartley is a New York corporation with its principal place of business in Jamestown, New York. Plaintiff Hartley has been an authorized Honda, Buick, Pontiac, and GM dealer, who sold Honda-, Buick-, Pontiac-, and GM-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States during the Class Period.

38. During the Class Period, Plaintiff Hartley purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Hartley purchased

and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in New York. Plaintiff Hartley has also displayed, sold, serviced, and advertised its Vehicles in New York during the Class Period.

39. Plaintiff John Lee is a Florida corporation with its principal place of business in Panama City, Florida. Plaintiff John Lee is an authorized dealer of Nissan-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

40. During the Class Period, Plaintiff John Lee purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff John Lee purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Florida. Plaintiff John Lee has also displayed, sold, serviced, and advertised its Vehicles in Florida during the Class Period.

41. Plaintiff Empire Nissan is a California limited liability company with its principal place of business in Santa Rosa, California. Plaintiff Empire Nissan is an authorized dealer of Nissan-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

42. During the Class Period, Plaintiff Empire Nissan purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Empire

Nissan purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in California. Plaintiff Empire Nissan has also displayed, sold, serviced, and advertised its Vehicles in California during the Class Period.

43. The majority of Plaintiffs described above sell Vehicles to customers who employ said Vehicles for personal use.

B. Defendants

1. NYK Defendants

44. Defendant NYK is a Japanese company. NYK has subsidiaries acting as its agents in the United States, including in Secaucus, New Jersey. NYK – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped Vehicles into the United States, including to and from this District, during the Class Period. NYK – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

45. Defendant NYK America is a wholly owned subsidiary of NYK. It is headquartered in Secaucus, New Jersey and acts as Defendant NYK's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of NYK, which controlled its policies, sales, and finances. NYK America shipped Vehicles into the United States, including to

and from this District, during the Class Period. NYK America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

2. MOL Defendants

46. Defendant MOL is a Japanese company. MOL has subsidiaries acting as its agents in the United States and has offices throughout the country, including headquarters in Lombard, Illinois. MOL – directly and/or through its subsidiaries, which it wholly owned and/or controlled – shipped Vehicles into the United States, including in this District, during the Class Period. MOL – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

47. Defendant MOL USA is a wholly owned subsidiary of MOL and a New Jersey corporation. It acts as Defendant MOL's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of MOL, which controlled its policies, sales, and finances. MOL USA shipped Vehicles into the United States, including to and from this District, during the Class Period. MOL USA also provided, marketed and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

48. Defendant WLS is a wholly owned subsidiary of MOL and a California corporation. It is headquartered in Long Beach, California and acts as Defendant MOL's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of MOL, which controlled its policies, sales, and finances. WLS shipped Vehicles into the United States, including to and from this District, during the Class Period. WLS also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

3. Höegh Defendants

49. Defendant Höegh is a Norwegian company. Höegh has subsidiaries acting as its agents in the United States. Höegh – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped Vehicles into the United States, including to and from this District, during the Class Period. Höegh – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

4. "K" Line Defendants

50. Defendant "K" Line is a Japanese company. "K" Line has subsidiaries acting as its agents in the United States. "K" Line – directly and/or

through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped Vehicles into the United States, including to and from this District, during the Class Period. "K" Line – directly and/or through its subsidiaries, which it wholly owned and/or controlled – provided, marketed and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

51. Defendant "K" Line America is a wholly owned subsidiary of "K" Line and a Virginia corporation. It is headquartered in Richmond Virginia and acts as "K" Line's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of "K" Line, which controlled its policies, sales, and finances. "K" Line America shipped Vehicles into the United States, including to and from this District, during the Class Period. "K" Line America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

5. WWL Defendants

52. Defendant WWL is a Norwegian-Swedish company. It is a joint venture between Wallenius Lines AB and Wilh.Wilhelmsen ASA that operates most of those companies' vessels and is the contracting party in customer contracts with OEMs for RoRo services. WWL has offices throughout the United States,

including in New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. WWL – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped Vehicles into the United States, including to and from this District, during the Class Period. WWL – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

53. Defendant WWL Americas is a New Jersey limited liability company. It is headquartered in Woodcliff Lake, New Jersey and acts as WWL's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of WWL, which controlled its policies, sales, and finances. WWL Americas shipped Vehicles into the United States, including to and from this District, during the Class Period. WWL Americas – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

54. Defendant EUKOR is a South Korean company. Eukor has offices throughout the United States, including in Fort Lee, New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. Eukor shipped Vehicles into the United States, including to and from this District, during the

Class Period. EUKOR – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

6. CSAV Defendants

55. Defendant CSAV is a Chilean company. Eukor has offices throughout the United States, including in Iselin, New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. CSAV shipped Vehicles into the United States, including to and from this District, during the Class Period. CSAV – directly and/or through its subsidiaries, which it wholly owned and/or controlled – also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

56. Defendant CSAV North America is a wholly owned subsidiary of CSAV and is a New Jersey limited liability company. It is headquartered in Iselin, New Jersey and acts as CSAV's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of CSAV, which controlled its policies, sales, and finances. It is the exclusive maritime agent for Defendant CSAV in the United States. CSAV North America shipped Vehicles into the United States, including to and from this District, during

the Class Period. CSAV North America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

IV. AGENTS AND CO-CONSPIRATORS

57. Each Defendant acted as the principal of or agent for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein.

58. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as Defendants in this lawsuit, and individuals, the identities of which are presently unknown, have participated as co-conspirators with Defendants in the offenses alleged in this Complaint and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

59. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's or limited liability entity's business or affairs.

V. FACTUAL ALLEGATIONS

A. The Vehicle Carrier Industry

60. The ocean shipping industry is comprised of multiple sectors and multiple types of vessels, including bulk carriers, tankers, and vehicle carriers. The conduct at issue occurred in the Vehicle Carriers industry. In addition to shipping Vehicles, Vehicle Carriers ship "high and heavy cargo"—cargo bigger and heavier than a vehicle and requiring special arrangements—and small, ancillary, non-moveable cargo, such as a plow blade for a plow truck.

61. The Vehicle Carriers industry consists of RoRo ships. A RoRo ship is a special type of ocean vessel that allows wheeled Vehicles to be driven and parked on its decks for long voyages. These ships, also known as Vehicle Carriers, have special ramps to permit easy access, high sides to protect the cargo during transport, and numerous decks to allow storage of a large number and variety of Vehicles.

62. There are different types of RoRo ships. A Pure Vehicle Carrier ("PCC") can be thought of as a parking garage and transports only Vehicles. The layout is designed to purely carry Vehicles and is fixed. Generally, there are multiple levels of parking forVehicles, and often the levels are movable for high and heavy cargo. A Pure Car and Truck Carrier ("PCTC") transports cars, trucks, and other four-wheeled vehicles and has a slightly different configuration..

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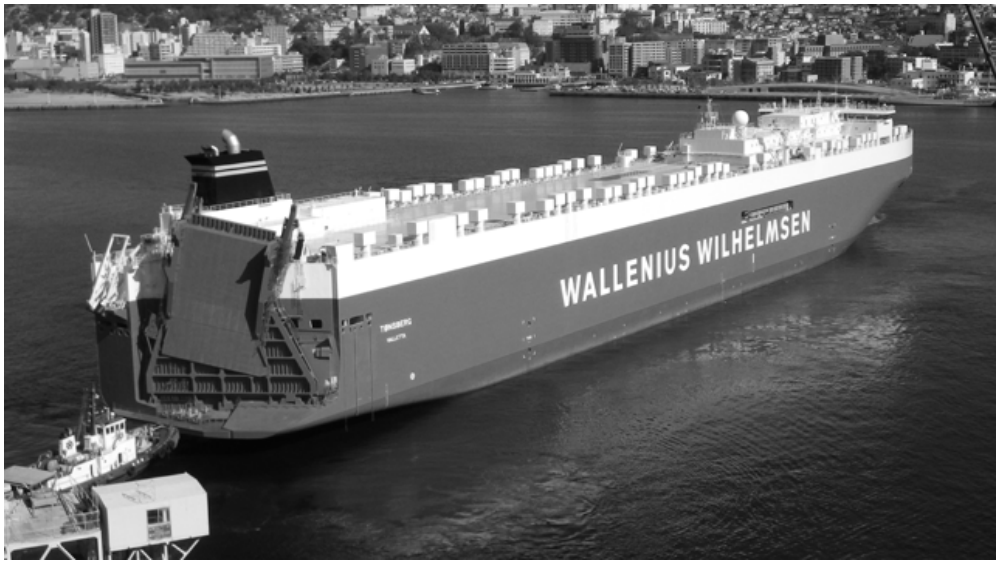
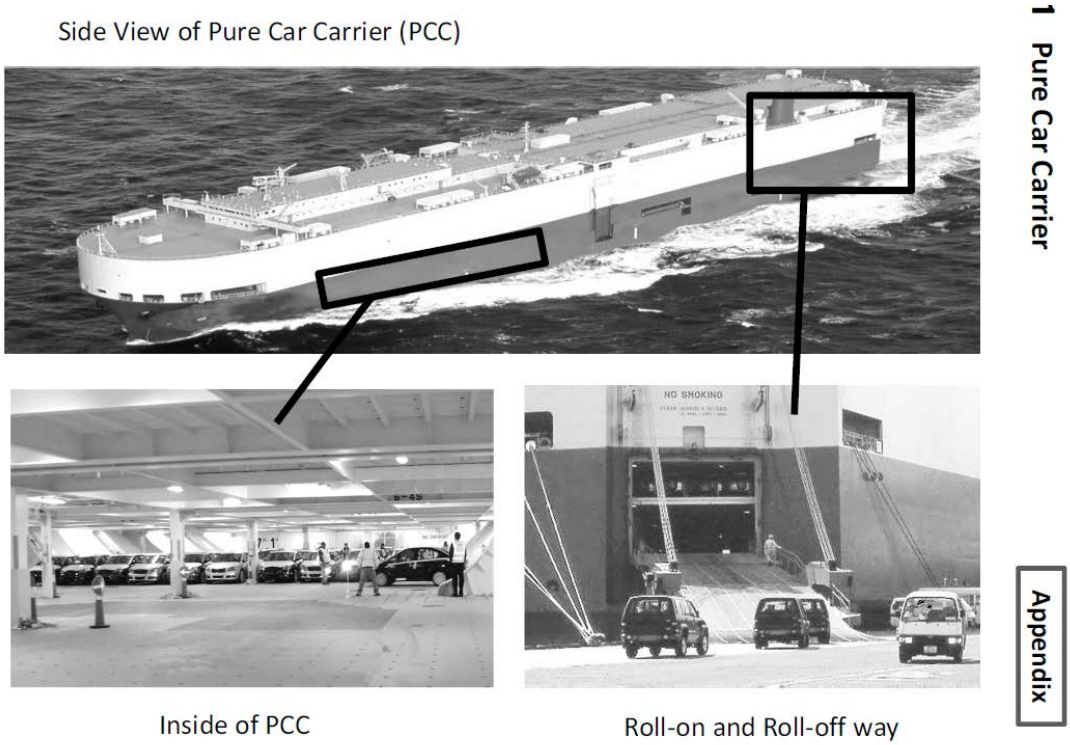


WW ASA's MV Tønsberg RoRo vessel



Source: http://www.jftc.go.jp/en/pressreleases/yearly-2014/March/140318.files/Appendix.pdf

63. In the Vehicle Carriers market, there is a distinction between deep sea services and short sea services. Deep sea vessels are large and transport thousands of Vehicles or rolling equipment between continents. Short sea vessels are smaller and transport fewer Vehicles or rolling equipment over shorter distances. Short sea vessels can enter smaller ports and shallower waters.

64. The vast majority of demand for deep sea service relates toVehicles. Consequently, the main ocean routes connect major vehicle manufacturing countries with major import markets for Vehicles. Different countries have several ports of call, and vessels generally sail in rotation visiting a sequence of ports.

65. Vehicle Carriers are a defined submarket of the larger bulk shipping market. World trade exploded after the proliferation of container ships. These ships allow a large range of goods, such as food and consumer electronics, to be packed in standard-sized containers for quick loading and delivery. However, cars, trucks, and heavy machinery, due to their larger and more irregular shapes, are not easily shipped in containers. Furthermore, there are no reasonable substitutes for the shipment of Vehicles by sea because any alternatives, such as air transportation, would be too costly.

66. Defendants and their co-conspirators provide Vehicle Carrier Services to original equipment manufacturers ("OEMs") – mostly large automotive, construction, and agricultural manufacturers – for transportation of Vehicles from

their country of origin to the country where they will be sold, including to the United States, at which point the Vehicles are delivered to Plaintiffs and the Auto Dealer Classes.

67. Defendants' customers include: Honda, Daimler, Mercedes-Benz, BMW, Ford, Subaru, Mazda, Suzuki, Mitsubishi, Nissan, Kia, Hyundai, and Volvo, among others. These OEMs directly purchase Vehicle Carrier Services from Defendants, usually pursuant to shipping contracts they have entered into with Defendants. Plaintiffs and the Auto Dealer Classes are then billed in full and pay in full for the Vehicle Carrier Services when they purchase Vehicles from OEMs. Thus, Plaintiffs and members of the proposed Auto Dealer Classes purchase Vehicle Carrier Services indirectly from Defendants and their co-conspirators by virtue of their purchase of new Vehicles during the Class Period.

68. Defendants engage in three different types of pricing negotiations with OEMs: (1) Bilateral negotiations whereby OEMs renew carriage contracts with Defendants; (2) Price reduction requests whereby OEMs request lower freight rates from Defendants; and (3) Tenders whereby multiple Defendants are invited to bid for a new or renewed contract award. Tenders involve an initial bid followed by a second round bid.

69. The contract period between a non-Japanese OEM and a Defendant vehicle carrier is typically two or three years. The contract period between a Japanese OEM and a Defendant Vehicle Carrier is typically one year.

70. In Japan, OEMs typically negotiate with an incumbent vehicle carrier when a contract expires, rather than engage in an open bidding, or tender process. Contracts are renewed in April of each year. Contract renewal negotiations often begin in December of the previous year.

71. American OEMs often rely on tenders to award business to a Defendant vehicle carrier.

72. Contracts, whether negotiated bilaterally or awarded by tender, generally cover global requirements, but rates are often negotiated for each individual route separately.

73. Contract freight rates for Vehicle Carrier Services are set on a per-unit basis. For instance, rates for Vehicles are typically set by a "per-car" price. However, rates for "high and heavy cargo," are based on weight or cubic meter.

74. Defendants also charge surcharges in addition to rates for Vehicle Carrier Services. The primary surcharges are (1) the Bunker Adjustment Factor ("BAF"), which relates to fuel; and (2) the Currency Adjustment Factor ("CAF"), which relates to the fluctuation of currency exchange rates.

75. Defendants and their co-conspirators provided Vehicle Carrier Services to OEMs for transportation of Vehicles to and from United States and elsewhere. Defendants and their co-conspirators provided Vehicle Carrier Services (a) in the United States for the transportation of Vehicles manufactured elsewhere for export to and sale in the United States, and (b) in other countries for the transportation of Vehicles manufactured elsewhere for export to and sale in the United States.

76. The annual market for Vehicle Carrier Services in the United States is nearly a billion dollars. Specifically, for the transportation of new, imported motor Vehicles manufactured elsewhere for export to and sale in the United States, the market is between $600 and $800 million each year.

B. The Market Structure and Characteristics Support the Existence of a Conspiracy

77. The structure and other characteristics of the market for Vehicle Carrier Services are conducive to a price-fixing agreement and have made collusion particularly attractive. Specifically, the Vehicle Carrier Services market: (1) has high barriers to entry; (2) has inelasticity of demand; (3) is highly concentrated; (4) is highly homogenized; (5) is rife with opportunities to meet and conspire; and (6) has excess capacity.

1. The Market for Vehicle Carrier Services Has High Barriers to Entry

78. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supra-competitive pricing. When, however, there are significant barriers to entry, new entrants are much less likely to enter the market. Thus, barriers to entry help facilitate the formation and maintenance of a cartel.

79. There are substantial barriers that preclude, reduce, or make more difficult entry into the Vehicle Carrier Services market. Transporting Vehicles without damage across oceans requires highly specialized and sophisticated equipment, resources, and industry knowledge. The ships that make such transport possible are highly specialized. Such ships are purposely built to an unusual design that includes high sides, multiple interior decks, and no container cargo space. These characteristics restrict the use of the ships to the Vehicle Carrier Services market. A new entrant into the business would face costly and lengthy start-up costs, including multi-million dollar costs associated with manufacturing or acquiring a fleet of Vehicle Carriers and other equipment, energy,

transportation, distribution infrastructure, and skilled labor. It is estimated that the capital cost of a RoRo is at least $95 million.[1]

80. Additionally, the nature of the Vehicle Carrier Services industry requires the establishment of a network of routes to serve a particular set of customers with whom Defendants establish long-term relationships. The existence of these established routes and long-term contracts increase switching costs for shippers and present an additional barrier to entry.

81. The Vehicle Carrier Services market also involves economies of scale and scope, which present additional barriers to entry.

a. Economies of scale exist where firms can lower the average cost per unit through increased production, since fixed costs are shared over a larger number of units. Vehicle Carriers are less sensitive to fuel prices than other modes of transportation, providing opportunities to exploit economies of scale. As fuel prices increased in the last five to ten years, market participants were incentivized to increase the average size of vessels. This reflects the presence of economies of scale, because fuel costs did not increase proportionally as vessel size grew.

[1] Asaf Ashar, *Marine Highways' New Direction*, J. OF COM. 38 (Nov. 21, 2011).

b. Economies of scope exist where firms achieve a cost advantage from providing a wide variety of products or services. The major Vehicle Carriers, including Defendants, own related shipping or transportation businesses they can utilize to provide additional services to clients, such as the operation of dedicated shipping terminals and inland transportation of Vehicles.

2. There is Inelasticity of Demand for Vehicle Carrier Services

82. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be "inelastic" if an increase in the price of a product results in only a small decline in the quantity sold of that product, if any. In other words, customers have nowhere to turn for alternative, cheaper products of similar quality and so continue to purchase despite a price increase.

83. For a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales, revenues, and profits as customers purchased substitute products or declined to buy altogether. Inelastic demand is a market characteristic that facilitates collusion, allowing producers to raise their prices without triggering customer substitution and lost sales revenue.

84. Demand for Vehicle Carrier Services is highly inelastic. This is because there are no close substitutes for this service. A Vehicle Carrier is the

only ocean vessel that has the carrying capacity for a large number of Vehicles. A Vehicle Carrier is also more versatile than other substitutes because it is built to adjust to various shapes and sizes. Because a container ship functions based on the uniformity of the cargo—everything must fit within the standardized containers—it is not conducive to transporting larger and more irregularly-shaped goods, such as cars, trucks, and agricultural and construction equipment. Foreign OEMs must employ Vehicle Carrier Services to facilitate the sale of their Vehicles in North America, regardless of whether prices are kept at supra-competitive levels. There is simply no alternative for high volume transoceanic transportation of Vehicles to the United States.

3. The Market for Vehicle Carriers Is Highly Concentrated

85. A concentrated market is more susceptible to collusion and other anticompetitive practices.

86. Defendants dominate the global Vehicle Carrier Services market, controlling over 70 percent of the Vehicle Carrier Services market during the Class Period.[2]

[2] Source: Hesnes Shipping AS, The Car Carrier Market 2010

4. The Services Provided by Vehicle Carriers Are Highly Homogeneous

87. Vehicle Carrier Services are a commodity-like service, which is interchangeable among Vehicle Carriers.

88. When products or services offered by different suppliers are viewed as interchangeable by purchasers, it is easier for suppliers to unlawfully agree on the price for the product or service in question, and it is easier to effectively police the collusively set prices. This makes it easier to form and sustain an unlawful cartel.

89. Vehicle Carrier Services are qualitatively the same across different carriers. Each Defendant has the capability to provide the same or similar Vehicle Carrier Services and Vehicle Carrier Service customers make purchase decisions based primarily on price. The core considerations for a purchaser will be where, when, and how much. This commoditization and interchangeability of Vehicle Carrier Services facilitated Defendants' conspiracy by making coordination on price much simpler than if Defendants had numerous distinct products or services with varying features.

5. Defendants Had Ample Opportunities to Meet and Conspire

90. The shipping industry has been characterized as a small world where many of the key figures know each other. Among the key figures are NYK's

president, Yasumi Kudo, MOL's president, Koichi Muto, and "K" Line's former president, Kenichi Kuroya.

91. Defendants attended industry events where they had the opportunity to meet, have improper discussions under the guise of legitimate business contacts, and perform acts necessary for the operation and furtherance of the conspiracy. For example, there are frequent trade shows for shipping companies around the globe, such as the Breakbulk conferences[3] and the biennial RoRo trade show in Europe.

92. Many employees of Defendants have spent their entire careers in the shipping industry. In several instances, key employees have transferred between the Defendant companies. This is not unusual and is true of many industries. But in the shipping industry it fostered familiarity and connections between professed competitors and facilitated high-level coordination for the conspiracy. For

[3] Breakbulk Magazine provides its readers with project cargo, heavy lift. and RoRo logistics intelligence including news, trending, data, and metrics. Breakbulk Magazine's global events include Breakbulk Transportation Conferences & Exhibitions, which "are the largest international events focused on traditional breakbulk logistics, heavy-lift transportation and project cargo trade issues." The conferences provide opportunities to "meet with specialized cargo carriers, ports, terminals, freight forwarders, heavy equipment transportation companies and packers." Source: http://www.breakbulk.com/breakbulk-global-events/.

example, Carl-Johan Hagman for the first eight years of his career worked for WWL, he then served as Chairman and CEO for EUKOR from at least 2003 through 2007, and in 2008, became the CEO of Höegh.

93. Defendants are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Defendants are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one in Tokyo on March 2, 2010 that was led by Yasumi Kudo (of NYK) and attended by Eizo Murakami (of "K" Line), Junichiro Ikeda (of MOL), and Yasuo Tanaka (of NYK).

94. Defendants CSAV (through its subsidiary CSAV Group North America), NYK America, "K" Line America, MOL (through its subsidiary, MOL (America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

95. Defendants "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

96. Defendants "K" Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

97. Defendants CSAV (through its subsidiary CSAV Group North America), NYK America, "K" Line America, MOL (through its subsidiary, MOL

(America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

98. Defendants "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

99. Defendants "K" Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

100. Defendants CSAV, "K" Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

101. Defendants CSAV, "K" Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

102. Defendants NYK Line, "K" Line, and MOL are members of the Japan Shipowners' Association, a trade association based in Japan.

103. These associations—and the meetings, trade shows, and other industry events that stem from them—provided Defendants with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy.

104. Defendants routinely enter into vessel-sharing agreements whereby they reserve space on each other's ships. These sharing or chartering agreements are very common in the international maritime shipping industry.

105. A "space charter" occurs when a shipping carrier charters space on another shipping carrier's vessel. The opportunity for a space charter arises when a shipping carrier has less than full capacity on its ship and another shipping carrier needs additional capacity.

106. A "time charter" occurs when a shipping carrier fully charters another vehicle carrier's vessel. The opportunity for a time charter arises when a vehicle carrier would otherwise send a vessel home empty and another vehicle carrier needs space.

107. While ostensibly entered into to optimize utilization capacity and increase efficiency, such sharing and chartering agreements also provide opportunities for Defendants to discuss Vehicle Carrier Services market shares, routes, and rates and to engage in illegal conspiracies to fix prices, rig bids, and allocate customers and markets.

108. The very nature of the negotiations between Vehicle Carriers and OEMs also facilitates collusion among Vehicle Carriers. Soren Tousgaard Jensen, Managing Director of WWL Russia has explained, using Japan as an example,

> [T]he manufacturers there, in order to get the right frequency, the right market coverage and the right ports, have often called in two, three, sometimes four shipping lines around the table and said that

> they would spread their volumes between them, depending on how competitive they were. The shipping lines have to work together to find ways of not having ships in the same position and ways of having one line deliver at the beginning of the month and another mid-month.[4]

6. The Market for Vehicle Carrier Services Has Experienced Excess Capacity

109. Excess capacity occurs when a market is capable of supplying more of a product or service than is needed. This often means that demand is less than the output the market has the capability to produce. Academic literature suggests, and courts have found, that the presence of excess capacity can facilitate collusion.[5] Significantly, the market for Vehicle Carrier Services has operated in a state of excess capacity since 2008. The tables below demonstrate that while the capacity of Vehicle Carriers to transport Vehicles has increased since 2007, the utilization rate of Vehicle Carriers has fallen, and remained stable at a rate of approximately 83% since 2010.

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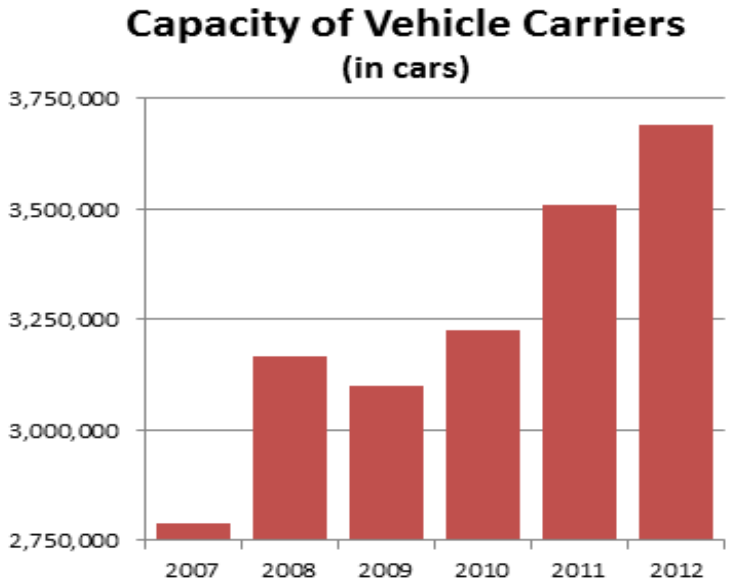
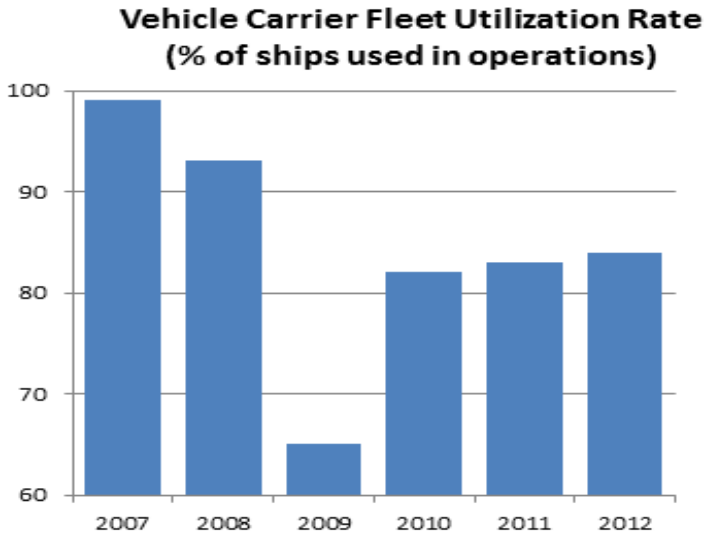
[4] *Profitability the key issue for RoRo carriers*, AUTO. SUPPLY CHAIN (Oct. 4, 2012), *available at* http://www.automotivesupplychain.org/features/133/77/Profitability-the-key-issue-for-RoRo-carriers/

[5] *See* Benoit, J. and V. Krishna, *Dynamic Duopoly: Prices and Quantities*, REV. OF ECON. STUDIES, 54, 23-36 (1987); Davidson, Carl & Raymond Deneckere, *Excess Capacity and Collusion*, INT'L ECON. REV., 31(3), 521-41 (1990); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 657 (7th Cir. 2002).



Source: The Car Carrier Market, 2004-2012; Hesnes Shipping AS



Source: The Platou Report 2004-2012

110. In the face of such excess capacity, Defendants agreed to reduce capacity and increase prices through fleet reduction, also known as "scrapping" or "lay-ups." Scrapping involves taking a ship out of commission, and rendering the

vessel non-usable. A "hot lay-up" involves taking a ship out of service while still retaining its crew to perform maintenance. A "cold lay-up" involves taking a vessel out of service and dismissing its crew. A ship that is "laid-up" may be re-commissioned. However, certain start-up costs are involved in order to do so. A cold lay-up requires higher start-up costs to re-commission a vessel than a hot lay-up.

111. Defendants' concerted, collusive efforts to reduce their fleets via scrapping and lay-ups decreased the availability of Vehicle Carrier Services in the market and caused prices to artificially rise during the Class Period.

C. Witnesses Confirmed Evidence of Collusion in the Vehicle Carrier Services Market

1. Defendants Conspired to Artificially Inflate Prices of Vehicle Carrier Services

a. Coordination of Price Increases

112. Defendants discussed vehicle carrier services pricing from as early as February 1997. Specifically, in February 1997, Defendants "K" Line, MOL, and NYK Line met several times in Tokyo to discuss Honda's upcoming renewal for the Japan to the United States route. Representatives included Messrs. Itage and Tanaka of "K" Line and Messrs. Hagino and Kawano of NYK at one or more of these meetings.

113. Generally, one vehicle carrier is the "lead" service provider for an OEM, such as Honda, though multiple vehicle carriers may provide services to an OEM. In 1997, MOL had an existing business relationship with Honda. In connection with Defendants' meeting in February 1997, "K" Line, MOL, and NYK agreed to separately request a price increase from Honda on the Japan to the United States route. Defendants also collectively agreed to specifically request a price increase for Honda Accords, which were manufactured in the United States at the time, on the United States to Japan route.

114. In 2002, Defendants "K" Line and MOL shared approximately 50 percent of Volkswagen's business on routes to the United States. In or around that same time, "K" Line and MOL agreed to seek a price increase of 3 to 5 percent from Volkswagen.

115. In late 2007, Volkswagen issued a tender for the Europe to the United States route. "K" Line and MOL discussed the tender and agreed to seek a price increase from Volkswagen.

116. In late 2007 or early 2008, executives from Defendants "K" Line, MOL, and NYK met on several occasions to discuss a 10-percent price increase for 2008 on the Japan to United States route.

a. In November 2007, Hiroyuki Fukumoto, General Manager of MOL's Car Carrier Division, and Mr. Kusnunose of NYK agreed to increase prices in 2008 and to persuade "K" Line to do the same.

b. In December 2007, Toshitaka Shishito, Managing Executive Officer of MOL's Car Carrier Division, and Mr. Kato of NYK had a dinner meeting in Tokyo to discuss increased costs and the need for a corresponding collective price increase in 2008.

c. On January 11, 2008, Messrs. Shishito and Kato had a lunch meeting, which included Mr. Murakami of "K" Line. At this meeting, MOL, NYK, and "K" Line agreed that their objective would be at least a 5-percent price increase with a potential maximum increase of up to 7.25 percent. "K" Line, MOL, and NYK then had a follow-up meeting in which they discussed how to implement the coordinated price increases. They agreed that each Defendant would take the lead to increase prices with those OEMs with whom it had the strongest business relationship.

d. On January 28, 2008, Messrs. Uchiyama of "K" Line, Fukumoto of MOL, and Kusunose of NYK Line met to discuss the 2008 price increase further and agreed on a target increase of 10 percent. Messrs. Yamaguchi of "K" Line, Fukumoto, and Kusunose then met the following month in furtherance of the agreement.

117. In November 2011, Höegh and MOL executives had a dinner meeting in which they discussed pricing for the United States to West Africa routes, which both Defendants serviced.

b. Coordination of Responses to Price Reduction Requests

118. In the fall of 2008, Messrs. Watanabe of MOL, Kurosawa of NYK, and Yokoyama of K Line communicated about price increases and price negotiations with Mitsubishi. They agreed on the price increase that each would seek from Mitsubishi.

119. In 2009, Mitsubishi requested a price reduction from "K" Line, MOL, and NYK Line equal to the price increase in 2008 and retroactive application of this reduction. Defendants discussed Mitsubishi's request and collusively agreed to limit the amount of the price reduction and respond with identical reductions of 50 percent of the 2008 price increases.

120. In 2009, Suzuki sought a price reduction from, MOL, NYK, and "K" Line. Mitsuoka Moriya, Manager of the Americas Team for MOL's Car Carrier Division; Mr. Shimizu of NYK; and Yokoyama of "K" Line met to discuss the request, and each company collusively agreed to limit the amount of the price reduction and reduce prices by the same amount. Similar collusive price reduction discussions occurred in 2010.

121. In September 2011, Toyota informed MOL that MOL's BAF and CAF surcharges were higher than its competitors and requested a price reduction. Mr. Watanbe, who became Manager of Americas Team for MOL's Car Carrier Division in 2011, discussed its pricing for Toyota with Mr. Kawamura of NYK Line and Mr. Fugimoto of "K" Line. MOL subsequently agreed to Toyota's request.

122. In 2012, Subaru sought a price reduction from MOL and NYK. Historically, NYK was the lead Vehicle Carrier Services provider for Subaru. Mr. Watanbe of MOL and Mr. Karamura of NYK Line collusively agreed to limit the amount of their price reduction and bid their existing prices.

2. Defendants Conspired to Allocate Customers and Routes for Vehicle Carrier Services

123. In or around 2001, MOL and Höegh discussed American Honda business from the United States to the Middle East. MOL told Höegh that, while MOL was not the incumbent for this particular route, MOL wanted the business. Thus, MOL requested that Höegh refrain from bidding on the route, and in return, MOL promised to use certain of Höegh's vessels on the route if MOL was awarded

the business. Höegh agreed, and MOL won the bid. As promised, MOL chartered Höegh vessels for the route.

124. In response to a tender issued by General Motors ("GM") in 2001 or 2002, MOL asked WWL not to submit a competitive bid out of "respect"[6] for MOL's incumbent business with GM. WWL agreed. MOL likewise asked NYK to submit a bid higher than MOL's and gave NYK a rate to bid. NYK agreed and submitted MOL's preferred bid.

125. In 2002 or 2003, MOL spoke with WWL about a Ford tender. WWL was the incumbent for Ford business from Europe to the United States, and MOL wanted to secure Ford's business from Thailand to the United States. WWL and MOL agreed not to compete with each other for the Ford business, and WWL gave MOL a rate to bid on the Europe to the United States route, which MOL submitted. At the same time, MOL spoke with Höegh, and Höegh agreed not to compete with MOL for Ford's business on the Thailand to the United States route, and MOL agreed to "respect" Höegh for Ford's business on routes from Africa to the Middle East.

[6] "Respect" is a term of art in Japanese business culture, which in this context may mean not bidding at all, or bidding a higher price.

126. In 2004, WWL agreed to respect MOL's Daimler and BMW businesses for the route from South Africa to the United States. In return, MOL agreed to "respect" WWL's portion of the Daimler and BMW business from Europe to the United States.

127. In the fall of 2008, Messrs. Watanabe of MOL, Kurosawa of NYK, and Yokoyama of K Line had discussions about an upcoming Mitsubishi tender. The parties agreed on the routes each would seek. NYK and K Line sought business to the West Coast of the United States, and the three companies shared Mitsubishi's East Coast business.

128. In 2008 or 2009, MOL asked "K" Line to respect its incumbent status for Chrysler business from the United States to South America. K Line agreed in return for respect from MOL on K Line's routes from Brazil to the United States and Argentina.

129. In 2008 or 2009, MOL and WWL agreed to respect rather than compete for each other's Daimler and BMW business. Specifically, WWL agreed not to compete for MOL's Daimler business from the Europe to the United States. In return, MOL agreed not to compete for WWL's BMW business from Europe to the United States.

130. In 2010, CSAV asked MOL to respect its GM business on routes from the United States to Columbia. MOL agreed and submitted a bid at a non-

competitive price provided by CSAV. This tender covered business for the years 2010 to 2012.

131. In February and/or March 2012, Messrs. Noguchi of MOL and Tsuneda of WWL met to discuss their companies' American Honda contracts. MOL and WWL agreed not to compete on certain routes from the U.S. to China and from the United States to Korea for American Honda. WWL gave MOL a price to bid on the United States-China route and retained that business with American Honda. In exchange, MOL gave WWL a price to bid on the United States-Korea route.

3. Defendants Conspired to Restrict Capacity for Vehicle Carrier Services

132. Defendants MOL, NYK, "K" Line, WWL, and/or Eukor also agreed to manipulate capacity and restrict the supply of Vehicle Carrier Services via fleet reductions.

133. From at least the late 1990s through 2002, Defendants MOL, "K" Line, NYK, Höegh, and WWL executives met twice a year in Europe and Japan where fleet reductions via ship scrapping and lay-ups were discussed.

134. In or around 2008 or 2009, demand for Vehicle Carrier Services fell as result of the worldwide financial crisis. Thereafter, Toshitaka Shishido of MOL, Mr. Kato of NYK, and Mr. Murakami of "K" Line met to discuss fleet reductions. MOL, NYK, and "K" Line agreed to scrap vessels, and as a general matter, they

also discussed and agreed on the need to resist price reduction requests from OEMs. Messrs. Shishido, Euren of WWL, and Hagman at Höegh also spoke about the need for fleet reductions. As a result of these agreements:

135. MOL scrapped approximately 40 vessels.

136. NYK scrapped approximately 40 vessels.

137. "K" Line scrapped approximately 25 vessels.

138. WWL engaged in cold lay-ups.

139. Höegh engaged in cold lay-ups.

4. Guilty Pleas in the Vehicle Carrier Services Industry

140. On February 27, 2014, the DOJ announced that Defendant CSAV had agreed to pay a $8.9 million criminal fine and to plead guilty to a one-count criminal information charging it with engaging in a conspiracy to suppress and eliminate competition by allocating customers and routes, rigging bids and fixing prices for the sale of international Vehicle Carrier Services of RoRo cargo to and from the United States and elsewhere, including the Port of Baltimore, from at least January 2000 to September 2012 in violation of section 1 of the Sherman Act, 15 U.S.C. § 1.

141. According to the criminal Information filed, to form and carry out the Vehicle Carrier Services conspiracy, Defendant CSAV and its co-conspirators:

a. attended meetings or otherwise engaged in communications regarding certain bids and tenders for international Vehicle Carrier Services for RoRo cargo;

b. agreed during those meetings and other communications to allocate customers by not competing for each other's existing business for certain customers on certain routes;

c. agreed during those meetings and other communications not to compete against each other on certain tenders by refraining from bidding or by agreeing on the prices they would bid on those tenders;

d. discussed and exchanged prices for certain customer tenders so as not to under each other's prices; submitted bids in accordance with the agreements reached; and

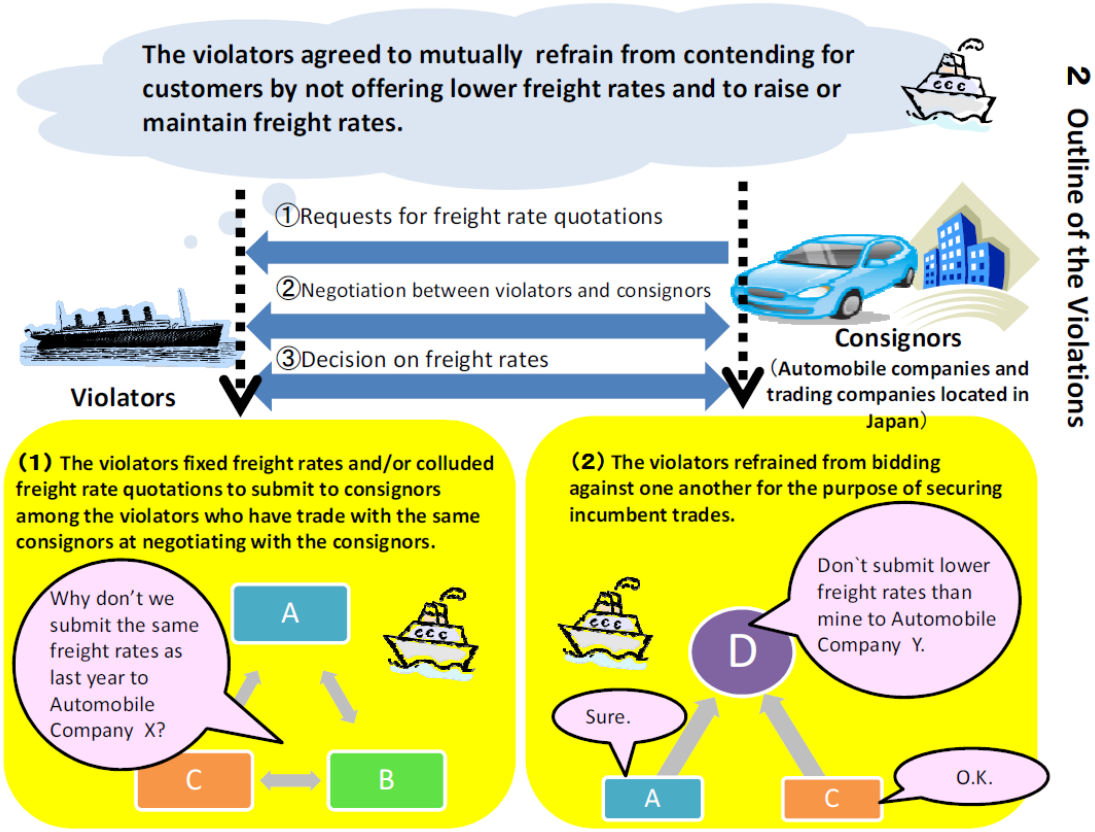
e. provided international Vehicle Carrier Services for certain roll-on, roll-off cargo to and from the United States and elsewhere at collusive and non-competitive prices.

142. This is the first charge in an ongoing federal antitrust investigation into price-fixing, bid-rigging, and other anticompetitive conduct in the international ocean shipping industry conducted by the DOJ Antitrust Division's National Criminal Enforcement Section and the FBI's Baltimore Field Office, along with assistance from the United States Customs and Border Protection,

Office of Internal Affairs, and Washington Field Office/Special Investigations Unit. Bill Baer, Assistant Attorney General in charge of the DOJ's Antitrust Division, stated, "Because of the growth in the automobile ocean shipping industry over the past 40 years, the conspiracy substantially affected interstate and foreign commerce. Prosecuting international price-fixing conspiracies remains a top priority for the division."

5. Government Fines in the Vehicle Carrier Services Industry

143. On March 19, 2014, the JFTC announced cease and desist orders and surcharge payment orders against four Defendants under Articles 7(2) and 7-2(1) of the Antimonopoly Act ("AMA") for price-fixing Vehicle Carrier Services from at least as early as around mid-January 2008 until September 6, 2012. The JFTC fined Tokyo-based Defendants NYK $128.4 million, "K" Line $55.9 million, and Nissan Motor Car Carrier Co. Ltd. $4.1 million. It also fined WWL $34.3 million. NYK Line and WWL control about 70 percent of the global market for carrying cars. The JFTC illustrated the violations in the figure below.



144. According to the JFTC, in accordance with the agreements, Defendants:

a. fixed freight rates and/or colluded freight rate quotations to submit to consignors among the companies who have trade with the same consignors at negotiating with the consignors; and

b. refrained from bidding against one another for the purpose of securing incumbent trades.

145. The JFTC found that NYK Line, K Line, WWL, and Mitsui OSK Lines Ltd. ("MOL") price-fixed Vehicle Carrier Services on the "North American route," which comprises of routes between ports in Japan and ports in the United

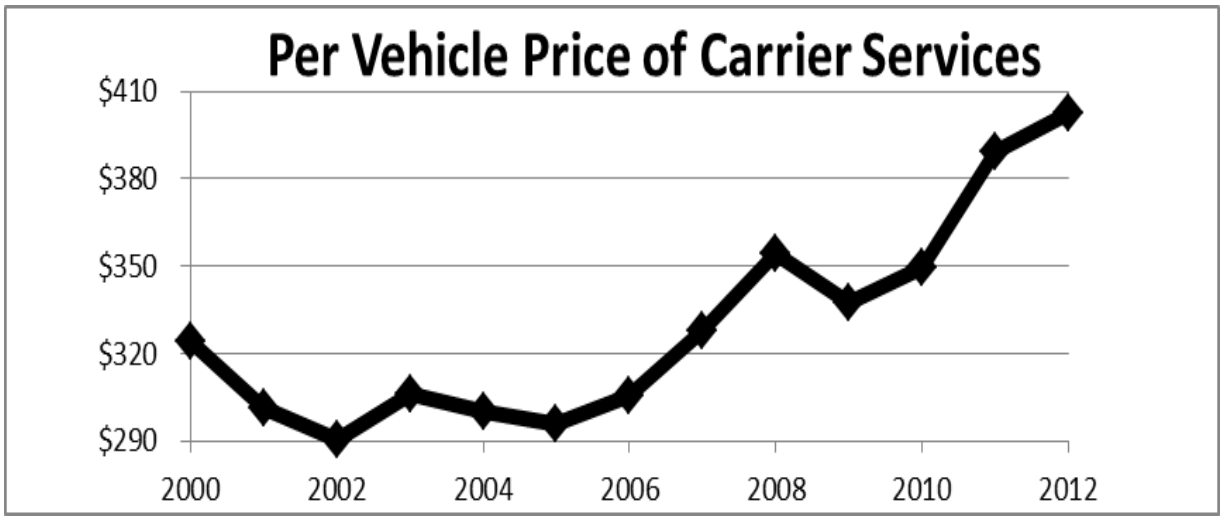
States (including Puerto Rico), Canada, or Mexico. The JFTC investigated but did not fine MOL because it had stopped participating in the alleged conduct prior to a 2012 investigation of its offices and the JFTC granted its application for leniency.

146. The EC and CCB are also part of the Vehicle Carrier antitrust probe. On September 6, 2012, EC officials carried out unannounced inspections at the premises of several vehicle carriers in several European Union member countries in coordination with the United States and Japan competition authorities. The EC had reasons to believe that the companies concerned may have violated Article 101 of the Treaty on the Functioning of the European Union, which prohibits cartels and restrictive business practices. On September 7, 2012, Defendant WWL confirmed that it had received requests for information from United States, Japan, European, and Canada competition authorities. WWL stated, "The purpose of these requests is to ascertain whether there is evidence of any infringement of competition law related to possible price cooperation between carriers and allocation of customers."

D. Other Evidence of Collusion in the Vehicle Carrier Service Market

1. Defendants Raised Prices at a Rate that Far Exceeded Demand

147. Prices for Vehicle Carrier Services have been generally increasing since 2006.



148. As the graph above demonstrates, pricing for Vehicle Carrier Services (per vehicle) remained relatively flat from 2001 to 2006. In 2001, the per-vehicle price was approximately $301.30, while in 2006 the per vehicle price was $305.79, an increase of less than 2 percent.

149. Beginning just prior to the Class Period, the price of Vehicle Carrier Services has increased by 23 percent.

150. The increase in the price of Vehicle Carrier Services far outpaced any increase in demand during the Class Period.

151. In the absence of an unlawful price-fixing conspiracy, according to the laws of supply and demand, prices would not increase at a rate greater than the rate of demand, yet that is exactly what happened in the Vehicle Carrier Services market during the Class Period.

2. Defendants Previously Colluded in Different Markets

152. The affiliates and subsidiaries of certain Defendants have recently pled guilty and agreed to pay millions of dollars in fines for violating the antitrust laws in other markets.

153. In 2007, the DOJ and EC launched an investigation into price fixing among international air freight forwarders, including certain affiliates and subsidiaries of Defendants. On October 10 of that year, the EC launched unannounced inspections at the premises of various international air freight forwarding companies with the help and coordination of various other nations' antitrust enforcement groups.

154. On March 19, 2009, the JFTC ordered 12 companies to pay $94.7 million in fines for violations of the Japanese Antimonopoly Act ("AMA"). Included among the 12 companies were "K" Line Logistics, Ltd., a subsidiary of Defendant "K" Line; Yusen Air & Sea Services Co., Ltd., a subsidiary of Defendant NYK Line; and MOL Logistics (Japan) Co., Ltd., a subsidiary of Defendant MOL.

155. The JFTC concluded that the companies had, over a five-year period, met and agreed to, among other things, the amount of fuel surcharges, security charges, and explosive inspection charges that they would charge their

international air freight forwarding customers. The agreements were, according to the JFTC, negotiated at meetings of the Japan Aircargo Forwarders Association.

156. Yusen Logistics Co., Ltd.[7] filed a complaint in April 2009 requesting a hearing to review the JFTC's orders. The Tokyo High Court upheld the JFTC orders on November 9, 2012.

157. On September 30, 2011, MOL Logistics (Japan) Co., Ltd. pleaded guilty to a Criminal Information in the United States District Court for the District of Columbia charging it with Sherman Act violations related to price fixing. MOL is one of 16 companies that agreed to plead guilty or have pled guilty as a result of the DOJ's freight forwarding investigation, which has resulted in more than $120 million in criminal fines to date. According to the Criminal Information filed against MOL Logistics (Japan) Co. Ltd., it and its co-conspirators accomplished their conspiracy by:

a. Participating in meetings, conversations, and communications to discuss certain components of freight forwarding service fees to be charged on air cargo shipments from Japan to the United States;

[7] On October 1, 2010, Yusen Air & Sea Services Co., Ltd. and NYK Logistics merged under the name Yusen Logistics Co., Ltd..

b. Agreeing, during those meetings, conversations, and communications, on one or more components of the freight forwarding service fees to be charged on air cargo shipments from Japan to the United States;

c. Levying freight forwarding service fees, and accepting payments for services provided for, air cargo shipments from Japan to the United States, in accordance with the agreements reached; and

d. Engaging in meetings, conversations, and communications for the purpose of monitoring and enforcing adherence to the agreed-upon freight forwarding service fees.

158. On March 28, 2012, the EC fined 14 international groups of companies, including Yusen Shenda Air & Sea Service (Shanghai) Ltd., a subsidiary of Defendant NYK Line, a total of $219 million for their participation in the air cargo cartels and violating European Union antitrust rules. According to the EC, "[i]n four distinct cartels, the cartelists established and coordinated four different surcharges and charging mechanisms, which are component elements of the final price billed to customers for these services."

159. On March 8, 2013, the DOJ announced that "K" Line Logistics, Ltd. and Yusen Logistics Co., Ltd., a subsidiary of Defendant NYK Line, agreed to pay criminal fines of $3,507,246 and $15,428,207, respectively, for their roles in a conspiracy to fix certain freight-forwarding fees for cargo shipped by air from the

United States to Japan. As with MOL Logistics (Japan) Co. Ltd., "K" Line Logistics, Ltd. and Yusen Logistics Co., Ltd. pleaded guilty to meeting with co-conspirators, agreeing to what freight forwarding service fees should be charged on air cargo shipments, and actually levying those fees on its customers from about September 2002 until at least November 2007.

VI. CLASS ACTION ALLEGATIONS

160. Plaintiffs brings this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the "Nationwide Class"):

> All automobile dealers that purchased new Vehicles shipped during the Class Period as to which one or more Defendants or any current or former subsidiary or affiliate thereof or any co-conspirator provided Vehicle Carrier Services.

161. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to the common law of unjust enrichment and the state antitrust, unfair competition, and consumer protection laws of the states listed in the Second and Third Claims for Relief (the "Indirect Purchaser States") on behalf of the following class (the "Damages Class"):

> All automobile dealers doing business in the Indirect Purchaser States that purchased new Vehicles shipped during the Class Period as to which one of the Defendants or any current or former subsidiary or

affiliate thereof or any co-conspirator provided Vehicle Carrier Services.

162. The Nationwide Class and the Damages Class are referred to herein as the "Auto Dealer Classes." Excluded from the Auto Dealer Classes are Defendants; their parent companies, subsidiaries, and affiliates; any co-conspirators; federal governmental entities; and instrumentalities of the federal government, states, and their subdivisions, agencies, and instrumentalities; and any judge assigned to hear this matter at either the district or appellate level and any employees or agents of those judges.

163. While Plaintiffs do not know the exact number of the members of the Auto Dealer Classes, Plaintiffs have reason to believe there are thousands of members in each Auto Dealer Class.

164. Common questions of law and fact exist as to all members of the Auto Dealer Classes. This is particularly true given the nature of Defendants' conspiracy, which was generally applicable to all the members of the Auto Dealer Classes, thereby making appropriate relief with respect to the Auto Dealer Classes as a whole. Such questions of law and fact common to the Auto Dealer Classes include, but are not limited to:

a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain, or stabilize the prices of Vehicle Carrier Services;

b. The identity of the participants of the alleged conspiracy;

c. The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

d. Whether the alleged conspiracy violated the Sherman Act, as alleged in the First Claim for Relief;

e. Whether the alleged conspiracy violated state antitrust, unfair competition law, and/or state consumer protection law, as alleged in the Second and Third Claims for Relief;

f. Whether Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Auto Dealer Classes, thereby entitling Plaintiffs and the members of the Auto Dealer Classes to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Claim for Relief;

g. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the members of the Auto Dealer Classes;

h. The effect of the alleged conspiracy on the prices of Vehicle Carrier Services sold in the United States during the Class Period;

i. Whether Plaintiffs and members of the Auto Dealer Classes had any reason to know or suspect the conspiracy, or any means to discover the conspiracy;

j. Whether Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from Plaintiffs and the members of the Auto Dealer Classes;

k. The appropriate injunctive and related equitable relief for the Nationwide Class; and

l. The appropriate class-wide measure of damages for the Damages Class.

165. Plaintiffs' claims are typical of the claims of the members of the Auto Dealer Classes, and Plaintiffs will fairly and adequately protect the interests of the Auto Dealer Classes. Plaintiffs and all members of the Auto Dealer Classes are similarly affected by Defendants' wrongful conduct in that they paid artificially inflated prices for Vehicle Carrier Services purchased indirectly from the Defendants and/or their co-conspirators.

166. Plaintiffs' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Auto Dealer Classes. Plaintiffs' interests are coincident with, and not antagonistic to, those of the other members of the Auto Dealer Classes. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

167. The questions of law and fact common to the members of the Auto Dealer Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

168. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that it might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

169. The prosecution of separate actions by individual members of the Auto Dealer Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

VII. PLAINTIFFS AND THE AUTO DEALER CLASSES SUFFERED ANTITRUST INJURY

170. Defendants' price-fixing, bid-rigging, customer-allocution, and capacity-reduction conspiracies had the following effects, among others:

a. Price competition has been restrained or eliminated with respect to Vehicle Carrier Services;

b. The prices of Vehicle Carrier Services have been fixed, raised, maintained, or stabilized at artificially inflated levels;

c. Defendants charged artificially inflated Vehicle Carrier prices to purchasers of their Vehicle Carrier Services; and

d. Having paid higher prices for shipment of the Vehicles they sold to Plaintiffs and the Auto Dealer Classes, firms who sold Vehicles to Plaintiffs and the Auto Dealer Classes passed Defendants' Vehicle Carrier overcharges on to them in full;

e. Defendants' overcharges passed through each level of distribution as they traveled to Plaintiffs and the Auto Dealer Classes; and

f. Plaintiffs and the Auto Dealer Classes paid Defendants' artificially inflated prices for Vehicle Carrier Services, during the Class Period, as a result of the Defendants' conspiracy and have been deprived of free and open competition.

171. During the Class Period, Plaintiffs and the members of the Auto Dealer Classes paid supra-competitive prices for Vehicle Carrier Services.

172. The market for Vehicle Carrier Services and the market for Vehicles are inextricably linked and intertwined because the market for Vehicle Carrier Services exists to serve the Vehicle market. Without the Vehicles, the Vehicle

Carrier Services have little to no value because they have no independent utility. Indeed, the demand for Vehicles creates the demand for Vehicle Carrier Services.

173. Vehicle Carrier Services are identifiable, discrete services that remain essentially unchanged when incorporated into the cost of Vehicles sold to Plaintiffs and the members of the Auto Dealer Classes. As a result, the cost of Vehicle Carrier Services follow a traceable chain from the Defendants to Plaintiffs and the members of the Auto Dealer Classes, and any costs attributable to Vehicle Carrier Services can be traced through the chain of Vehicle distribution to Plaintiffs and the members of the Auto Dealer Classes.

174. Hence, the inflated prices of Vehicle Carrier Services in new Vehicles resulting from Defendants' price-fixing conspiracy have been passed on to Plaintiffs and the other members of the Auto Dealer Classes by OEMs. Those overcharges have unjustly enriched Defendants.

175. The purpose of the conspiratorial conduct of the Defendants and their co-conspirators was to raise, fix, rig, or stabilize the price of Vehicle Carrier Services and, as a direct and foreseeable result, the price of new Vehicles shipped by Vehicle Carriers.

176. By reason of the alleged violations of the antitrust laws and other laws alleged herein, Plaintiffs and the members of the Auto Dealer Classes have sustained injury to their businesses or property, having paid higher prices for

Vehicle Carrier Services than they would have paid in the absence of the Defendants' illegal contract, combination, or conspiracy and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

177. The common and consistent impact of Defendants' conspiracy on Plaintiffs' businesses was substantial. Plaintiffs and the members of the Auto Dealer Classes were substantially injured by higher but for prices for Vehicle Carrier Services regardless of the pass on of some portion of such prices to end users.

178. Given the nature of their business, Plaintiffs and similarly situated members of the Auto Dealer Classes had to and did absorb a significant portion of the overcharges that they paid due to Defendants' illegal activities. Plaintiffs and similarly situated member of the Auto Dealer Classes did not "pass on" all of the overcharges or higher but for prices caused by Defendants' illegal activities.

179. Plaintiffs have standing, and have suffered damage, in the states where they reside, compensable by indirect purchaser laws, and they and members of the Auto Dealer Classes they seek to represent have sustained significant damage and injury as a result of Defendants' conspiracy and unlawful and unfair trade practices.

VIII. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. The Statute of Limitations Did Not Begin to Run Because The Plaintiffs Did Not and Could Not Discover Their Claims

180. Plaintiffs repeat and re-allege the allegations set forth above.

181. Plaintiffs and members of the Auto Dealer Classes had no knowledge of the combination or conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until shortly before the filing of this Complaint.

182. Plaintiffs and members of the Auto Dealer Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until, at the very earliest, September 6, 2012, the date the JFTC announced raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

183. Plaintiffs and members of the Auto Dealer Classes are automobile dealers that indirectly purchased Vehicle Carrier Services. They had no direct contact or interaction with the Defendants and had no means from which they could have discovered the combination and conspiracy described in this Complaint before the September 6, 2012 raids alleged above.

184. No information in the public domain was available to Plaintiffs and members of the Auto Dealer Classes prior to the public announcement of raids on

September 6, 2012 that revealed sufficient information to suggest that the Defendants were involved in a criminal conspiracy to fix the prices charged for Vehicle Carrier Services. Plaintiffs and members of the Auto Dealer Classes had no means of obtaining any facts or information concerning any aspect of Defendants' dealings with OEMs or other direct purchasers, much less the fact that they had engaged in the combination and conspiracy alleged herein.

185. For these reasons, the statute of limitations as to Plaintiffs and the Auto Dealer Classes' claims did not begin to run and has been tolled with respect to the claims that Plaintiffs and members of the Auto Dealer Classes have alleged in this Complaint.

B. Fraudulent Concealment Tolled the Statute of Limitations

186. In the alternative, application of the doctrine of fraudulent concealment tolled the statute of limitations as to the claims asserted herein by Plaintiffs and the Auto Dealer Classes. Plaintiffs and members of the Auto Dealer Classes did not know, and could not discover through the exercise of reasonable diligence, the existence of the conspiracy and unlawful combination alleged herein until, at the earliest, the September 6, 2012 public announcement of the government investigations into price fixing of Vehicle Carrier charges and the JFTC raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

187. Because Defendants' agreements, understandings, and conspiracy were kept secret until September 6, 2012, Plaintiffs and members of the Auto Dealer Classes were unaware before that time of Defendants' unlawful conduct, and they did not know before then that they were paying supra-competitive prices for Vehicle Carrier Services throughout the United States during the Class Period. No information, actual or constructive, was ever made available to Plaintiffs and members of the Auto Dealer Classes that even hinted to Plaintiffs and the members of the Auto Dealer Classes that they were being injured by Defendants' unlawful conduct.

188. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

189. By its very nature, the Defendants' anticompetitive conspiracy and unlawful combinations were inherently self-concealing. Defendants met and communicated in secret and agreed to keep the facts about their collusive conduct from being discovered by any member of the public or by the OEMs and other direct purchasers with whom they did business.

190. Plaintiffs and members of the Auto Dealer Classes could not have discovered the alleged combination or conspiracy at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of

secrecy employed by the Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their conduct.

191. Defendants affirmatively concealed their conspiracy by falsely claiming that the Vehicle Carrier Services market was competitive and creating the illusion that prices were rising as a result of increased demand and tight supply. For example, Defendants stated:

- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2003, at pg. 10.
- "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at pg. 23.
- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2005, at pg. 19.
- "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at pg. 42.
- "CSAV participates in a highly competitive market in which cargo volumes are directly affected by the fluctuations in the global economic growth." *Id*. at pg. 152.
- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2006, at pg. 15.
- "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id*. at pg. 38.

- "CSAV participates in a highly competitive market in which demand for cargo transport is directly affected by fluctuations in global economic growth." *Id*. at pg. 149.

- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2007, at pg. 15.

- "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id*. at pg. 39.

- "The 'K' Line Group is doing business in all international markets, and is involved in competition with many shipping companies at home and abroad." "K" Line Annual Report 2008, at g. 55.

- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2008, at pg. 17.

- "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id*. at pg. 35.

- "The 'K Line Group promises to comply with applicable laws, ordinances, rules and spirit of the international community and conduct its corporate activities through fair, transparent and free competition." "K" Line Annual Report 2009, at pg. 1.

- "Global automobile marine transport volume was robust through the middle of 2008, resulting in a severe shortage of vessels in the marine transport market, a market in which prices are based on the relationship between supply and demand. As a result, shipping rates were on the increase." NYK Annual Report 2009, at pg. 8.

- "Demand for ocean transportation of ro-ro cargo to Oceania remained at low levels through the year, while car volumes rose in the latter half of the year. Trades involving emerging markets such as China, South America, India and Africa offered

relatively healthy volumes through most of the year, although fierce competition put significant pressure on rates." Wil. Wilhelmsen ASA Annual Report 2009, at pg. 11.

- The shipping business is very competitive and is noted for its sensitivity to changes in economic activity. CSAV Annual Report 2009, at pg. 17.

- "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id*. at pg. 36.

- "Through its capital intensity and cyclical nature, the shipping segment has historically represented higher volatility and financial risk than maritime services. The car/ro-ro shipping has during the recent history also represented the single largest investment area and exposure for the group and its shareholders….Demand for transportation of cars and other cargo has improved significantly, primarily during the second half of the year, and combined with better mix of cargo types this has positively affected the profitability of the fleet." Wil. Wilhelmsen ASA Annual Report 2010, at pg. 19-20.

- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2010, at pg. 15.

- "CSAV works in a very competitive market, in which variations in global economic growth directly affect the demand for cargo transport." *Id*. at pg. 35.

- "The results of the car-carrying services were severely affected by the fall in global demand seen in 2011…[a]dded to the weak global demand for car carriers and the consequent under-utilization of ships was a sharp rise in oil prices." CSAV Annual Report 2011, at pg. 22.

- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2011, at pg. 15.

- "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." *Id*. at pg. 19.
- "In addition to Japanese marine transport operators, the NYK Group competes with international shipping companies operating throughout the globe, and the competitive situation is growing more intense." NYK Annual Report 2012, at pg. 102.

192. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiffs and members of the Auto Dealer Classes had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed, until September 6, 2012, when the JFTC announced raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

193. For these reasons, the statute of limitations applicable to Plaintiffs' and the Auto Dealer Classes' claims was tolled and did not begin to run until September 6, 2012.

FIRST CLAIM FOR RELIEF
Violation of Section 1 of the Sherman Act
(on behalf of Plaintiffs and the Nationwide Class)

194. Plaintiffs repeat and re-allege the allegations set forth above.

195. Defendants and unnamed conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

196. The acts done by each of the Defendants as part of, and in furtherance of, their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

197. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding, and conspiracy in restraint of trade to artificially fix, raise, stabilize, and control prices for Vehicle Carrier Services, thereby creating anticompetitive effects.

198. The anticompetitive acts were intentionally directed at the United States market for Vehicle Carrier Services and had a substantial and foreseeable effect on interstate commerce by raising and fixing prices for Vehicle Carrier Services throughout the United States.

199. The conspiratorial acts and combinations have caused unreasonable restraints in the market for Vehicle Carrier Services.

200. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased Vehicle Carrier Services have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

201. In formulating and carrying out the alleged agreement, understanding, and conspiracy, Defendants and their co-conspirators did those things that they

combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth herein.

202. Defendants' conspiracy had the following effects, among others:

a. Price competition in the market for Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the United States;

b. Prices for Vehicle Carrier Services provided by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive levels throughout the United States;

c. Prices for Vehicles purchased by Plaintiffs and the members of the Nationwide Class and shipped by Defendants and their coconspirators were inflated; and

d. Plaintiffs and members of the Nationwide Class who purchased Vehicles shipped by Defendants and indirectly paid Defendants and their co-conspirators for Vehicle Carrier Services have been deprived of the benefits of free and open competition.

203. Plaintiffs and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for Vehicle Carrier Services than they would have paid and will pay in the absence of the conspiracy.

204. Plaintiffs and members of the Nationwide Class will continue to be subject to Defendants' price-fixing, bid-rigging, and market allocations, which will deprive Plaintiffs and members of the Nationwide Class of the benefits of free competition, including competitively-priced Vehicle Carrier Services.

205. Plaintiffs and members of the Nationwide Class will continue to lose funds due to overpayment for Vehicle Carrier Services because they are required to purchase Vehicles that are imported on RoRos owned and operated by Defendants and their co-conspirators to continue to operate their businesses.

206. Plaintiffs and members of the Nationwide Class continue to purchase Vehicles that are imported on RoRos owned and operated by Defendants and their co-conspirators, on a regular basis, and to pay fees for Vehicle Carrier Services.

207. Defendants and their co-conspirators continue to charge fees for their Vehicle Carrier Services that are inflated, fixed, and maintained by their conspiracy.

208. The alleged contract, combination, or conspiracy is a *per se* violation of the federal antitrust laws.

209. Plaintiffs and members of the Nationwide Class will be at the mercy of Defendants' unlawful conduct until the Court orders an injunction.

210. Plaintiffs and members of the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

SECOND CLAIM FOR RELIEF
Violation of State Antitrust Statutes
(on behalf of Plaintiffs and the Damages Class)

211. Plaintiffs repeat and re-allege the allegations set forth above.

212. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination, or conspiracy with respect to the provision of Vehicle Carrier Services in unreasonable restraint of trade and commerce and in violation of the various state antitrust statutes set forth below.

213. The contract, combination, or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain at artificially supra-competitive prices for Vehicle Carrier Services, to rig bids for Vehicle Carrier Services, and to allocate customers for Vehicle Carrier Services in the United States.

214. In formulating and effectuating this conspiracy, Defendants and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

a. participating in meetings and conversations among themselves in the United States and elsewhere during which they agreed to price Vehicle

Carrier Services at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid by Plaintiffs and members of the Damages Class, with respect to Vehicle Carrier Services provided in the United States;

b. allocating customers and markets for Vehicle Carrier Services provided in the United States in furtherance of their agreements; and

c. participating in meetings and conversations among themselves in the United States and elsewhere to implement, adhere to, and police the unlawful agreements they reached.

215. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, increase, maintain, or stabilize prices and to allocate customers with respect to Vehicle Carrier Services.

216. Defendants' anticompetitive acts described above were knowing, willful, and constitute violations or flagrant violations of the following state antitrust statutes.

217. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Arizona; (2) Vehicle Carrier Services prices were

raised, fixed, maintained, and stabilized at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants entered into agreements in restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

218. Defendants have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq*.

a. During the Class Period, Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Section 16720 of the California Business and Professions Code. Defendants, each of them, have acted in violation

of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, Vehicle Carrier Services at supra-competitive levels.

b. The aforesaid violations of Section 16720, California Business and Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and to allocate markets for, Vehicle Carrier Services.

c. For the purpose of forming and effectuating the unlawful trust, Defendants and their co-conspirators have done those things which they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth above and the following: (1) Fixing, raising, stabilizing, and pegging the price of Vehicle Carrier Services; and (2) Allocating among themselves the provision of Vehicle Carrier Services.

d. The combination and conspiracy alleged herein has had, *inter alia*, the following effects: (1) Price competition in the provision of Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the State of California; (2) Prices for Vehicle Carrier Services sold by Defendants and their co-conspirators have been fixed, raised, stabilized, and pegged at artificially high, non-competitive levels in the State of California and throughout the United States;

and (3) Those who purchased Vehicle Carrier Services from Defendants and their co-conspirators have been deprived of the benefit of free and open competition.

e. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property in that they paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a result of Defendants' violation of Section 16720 of the California Business and Professions Code, Plaintiffs and members of the Damages Class seek treble damages and their cost of suit, including a reasonable attorney's fee, pursuant to Section 16750(a) of the California Business and Professions Code.

219. Defendants have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Code Annotated §§ 28-4501, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased Vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in the District

of Columbia; and (4) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased Vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in the District of Columbia.

b. During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce.

c. As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

220. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq*.

a. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) Vehicle Carrier Services prices were raised, fixed,

maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Hawaii Revised Statutes Annotated §§ 480-4, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Hawaii Revised Statutes Annotated §§ 480-4, *et seq*.

221. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Illinois Antitrust Act, 740 Illinois Compiled Statutes 10/1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier price competition was restrained, suppressed, and eliminated throughout Illinois; (2) Vehicle Carrier Services prices were raised,

fixed, maintained, and stabilized at artificially high levels throughout Illinois; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Illinois commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 740 Illinois Compiled Statutes 10/1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under 740 Illinois Compiled Statutes 10/1, *et seq.*

222. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code §§ 553.1, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Iowa; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class were deprived of free and open

competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Iowa commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Iowa Code §§ 553.1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Iowa Code §§ 553.1, *et seq.*.

223. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Kansas; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Kansas commerce.

c. As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

224. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Maine; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Maine commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

225. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Michigan Compiled Laws Annotated §§ 445.771, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Michigan; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Michigan; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Michigan commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp. Laws Ann. §§ 445.771, *et seq*.

226. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Minnesota Annotated Statutes §§ 325D.49, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Minnesota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Minnesota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Minnesota commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq*.

227. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Mississippi Code Annotated §§ 75-21-1, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Mississippi; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Mississippi; (3) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Vehicles in Mississippi that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in Mississippi; and (4) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Vehicles in Mississippi that were shipped by Defendants or their co-conspirators,

paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in Mississippi.

b. During the Class Period, Defendants' illegal conduct substantially affected Mississippi commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq.*

228. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nebraska Revised Statutes §§ 59-801, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nebraska; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Nebraska commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq.*

229. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Nevada; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class, including those who resided in Nevada and/or purchased Vehicles in Nevada that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in Nevada; and (4) Plaintiffs and members of the Damages, including those who resided in Nevada and/or purchased Vehicles in Nevada that were shipped by

Defendants or their co-conspirators, Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in Nevada.

b. During the Class Period, Defendants' illegal conduct substantially affected Nevada commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

230. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes §§ 356:1, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Hampshire; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages

Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected New Hampshire commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Hampshire Revised Statutes §§ 356:1, *et seq*.

231. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Mexico Statutes Annotated §§ 57-1-1, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, *et seq*.

232. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws §§ 340, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New York; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class, including those who resided in New York and/or purchased Vehicles in New York that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in New York; and (4) Plaintiffs and members of the Damages Class, including those who resided in New York and/or purchased Vehicles in New York

that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in New York when they purchased Vehicles transported by Vehicle Carrier Services, or purchased products that were otherwise of lower quality, than would have been absent the Defendants' illegal acts, or were unable to purchase products that they would have otherwise have purchased absent the illegal conduct.

b. During the Class Period, Defendants' illegal conduct substantially affected New York commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq*. The conduct set forth above is a *per se* violation of the Act. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New York Gen. Bus. Law §§ 340, *et seq*.

233. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes §§ 75-1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed,

and eliminated throughout North Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Vehicles in North Carolina that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in North Carolina; and (4) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Vehicles in North Carolina that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in North Carolina

b. During the Class Period, Defendants' illegal conduct substantially affected North Carolina commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Carolina Gen. Stat. §§ 75-1, *et. seq*.

234. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Dakota Century Code §§ 51-08.1-01, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout North Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on North Dakota commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Dakota Cent. Code §§ 51-08.1-01, *et seq*.

235. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Oregon Revised Statutes §§ 646.705, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Oregon; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Oregon commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq*.

236. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout South Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of S.C. Code Ann. §§ 39-5-10, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under S.C. Code Ann. §§ 39-5-10, *et seq*.

237. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws §§ 37-1-3.1, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed,

and eliminated throughout South Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased Vehicles in South Dakota that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in South Dakota; and (4) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased Vehicles in South Dakota that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in South Dakota.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et seq*.

238. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated §§ 76-10-911, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Utah; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Utah commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Utah Code Annotated §§ 76-10-911, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Utah Code Annotated §§ 76-10-911, *et seq*.

239. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Vermont Stat. Ann. 9 §§ 2451, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Vermont commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 9 Vermont Stat. Ann. §§ 2451, *et seq*. Plaintiffs are entitled to relief pursuant to 9 Vermont Stat. Ann. § 2465 and any other applicable authority. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under 9 Vermont Stat. Ann. §§ 2451, *et seq*.

240. Defendants have entered into an unlawful agreement in restraint of trade in violation of the West Virginia Code §§ 47-18-1, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout West Virginia; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout West Virginia; (3) Plaintiffs and members of the Damages Class, including those who resided in West Virginia and/or purchased Vehicles in West Virginia that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in West Virginia; and (4) Plaintiffs and members of the Damages, including those who resided in West Virginia and/or purchased Vehicles in West Virginia that were shipped by Defendants or their co-conspirators, Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in West Virginia.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on West Virginia commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of West Virginia Code §§ 47-18-1, *et*

seq. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under West Virginia Code §§ 47-18-1, *et seq*.

241. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Wisconsin Statutes §§ 133.01, *et seq*.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Wisconsin; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Wisconsin; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Wisconsin commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq*. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Wisconsin Stat. §§ 133.01, *et seq*.

242. Plaintiffs and members of the Damages Class in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy, and agreement. Plaintiffs and members of the Damages Class have paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

243. In addition, Defendants have profited significantly from the aforesaid conspiracy. Defendants' profits derived from their anticompetitive conduct come at the expense and detriment of members of the Plaintiffs and the members of the Damages Class.

244. Accordingly, Plaintiffs and the members of the Damages Class in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

THIRD CLAIM FOR RELIEF
Violation of State Consumer Protection Statutes
(on behalf of Plaintiffs and the Damages Class)

245. Plaintiffs repeat and re-allege the allegations set forth above.

246. Defendants knowingly engaged in unlawful, unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

247. Defendants have knowingly entered into an unlawful agreement in restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101.

a. Defendants knowingly agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Arkansas and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. The aforementioned conduct on the part of the Defendants constituted "unconscionable" and "deceptive" acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10).

c. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Arkansas; (2) p Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Arkansas; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

d. During the Class Period, Defendants' illegal conduct substantially affected Arkansas commerce and consumers.

e. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

f. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

248. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of California Business and Professions Code §§ 17200, *et seq*.

a. During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in California and committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq*. of the California Business and Professions Code, by engaging in the acts and practices specified above.

b. During the Class Period, Defendants' illegal conduct substantially affected California commerce and consumers.

c. This claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged herein, that violated Section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Law.

d. Defendants' conduct as alleged herein violated Section 17200. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200, *et seq*., including, but not limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set forth above; and (2) the violations of Section 16720, et seq., of the California Business and Professions Code, set forth above;

e. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as described above, whether or not in violation of Section 16720, *et seq*., of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful, or fraudulent;

f. Defendants' acts or practices are unfair to purchasers of Vehicle Carrier Services (or Vehicles transported by them) in the State of

California within the meaning of Section 17200, California Business and Professions Code; and

g. Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

h. Plaintiffs and members of the Damages Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business acts or practices.

i. The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

j. The unlawful and unfair business practices of Defendants, and each of them, as described above, have caused and continue to cause Plaintiffs and the members of the Damages Class to pay supra-competitive and artificially-inflated prices for Vehicle Carrier Services (or Vehicles transported by them). Plaintiffs and the members of the Damages Class suffered injury in fact and lost money or property as a result of such unfair competition.

k. The conduct of Defendants as alleged in this Complaint violates Section 17200 of the California Business and Professions Code.

l. As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs and the members of the Damages Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

249. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq*.

a. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Florida; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Florida; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Florida commerce and consumers.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

250. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Massachusetts Gen. Laws, Ch 93A, § 1 et seq.

a. Defendants were engaged in trade or commerce as defined by G.L. 93A. Defendants, in a market that includes Massachusetts, agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Massachusetts and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. The aforementioned conduct on the part of the Defendants constituted “unfair methods of competition and unfair or deceptive acts or practices

in the conduct of any trade or commerce," in violation of Massachusetts Gen. Laws, Ch 93A, § 2, 11.

c. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Massachusetts; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

d. During the Class Period, Defendants' illegal conduct substantially affected Massachusetts commerce and consumers.

e. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

f. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Massachusetts Gen. Laws, Ch 93A, §§ 2, 11, that were knowing or willful, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute, including multiple damages.

251. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-201, *et. seq*.

a. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Montana; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Montana commerce and consumers.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code, §§ 30-14-201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

252. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq*.

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. The aforementioned conduct on the part of the Defendants constituted "unconscionable trade practices," in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for Vehicle Carrier Services as set forth in N.M.S.A., § 57-12-2E. Plaintiffs were not aware of Defendants' price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for Vehicle Carrier Services. Defendants had the sole power to set that price and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing Vehicle Carrier Services because they were unaware of the unlawful overcharge and there was no

alternative source of supply through which Plaintiffs could avoid the overcharges. Defendants' conduct with regard to sales of Vehicle Carrier Services, including their illegal conspiracy to secretly fix the price of Vehicle Carrier Services at supra-competitive levels and overcharge Plaintiffs and the Damages Class, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs.

c. The aforementioned conduct on the part of the Defendants constituted "unconscionable trade practices," in violation of N.M.S.A. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for the Vehicle Carrier Services as set forth in N.M.S.A. § 57-12-2E, due to the inflated prices paid by Plaintiffs and Damages Class members for the Vehicles and the Vehicle Carrier Services.

d. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages

Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

e. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce and consumers.

f. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

g. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

253. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

a. Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in New York and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. Defendants and their co-conspirators made public statements about the prices of Vehicle Carrier Services that either omitted material information that rendered the statements that they made materially misleading or affirmatively misrepresented the real cause of price increases for Vehicle Carrier Services, and Defendants alone possessed material information that was relevant to Plaintiffs and the Damages Classes but failed to provide the information.

c. Because of Defendants' unlawful trade practices in the State of New York, New York class members who indirectly purchased Vehicle Carrier Services were misled to believe that they were paying a fair price for Vehicle Carrier Services or the price increases for Vehicle Carrier Services were for valid business reasons, and similarly situated class members were potentially affected by Defendants' conspiracy.

d. Defendants knew that their unlawful trade practices with respect to pricing Vehicle Carrier Services would have an impact on New York class members and not just the Defendants' direct customers.

e. Defendants knew that their unlawful trade practices with respect to pricing Vehicle Carrier Services would have a broad impact, causing class members who indirectly purchased Vehicle Carrier Services to be injured by paying more for Vehicle Carrier Services than they would have paid in the absence of Defendants' unlawful trade acts and practices.

f. The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner.

g. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New York; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

h. During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in New York, and Defendants' illegal conduct substantially affected New York commerce and consumers.

i. During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed Vehicle Carrier Services in New York.

j. Plaintiffs and members of the Damages Class seek all relief available pursuant to N.Y. Gen. Bus. Law § 349(h).

254. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq*.

a. Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in North Carolina and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. Defendants' price-fixing conspiracy could not have succeeded absent deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation, implementation, and maintenance of Defendants' price-fixing conspiracy. Defendants committed inherently deceptive and self-concealing actions, of which Plaintiffs could not possibly have been aware. Defendants and their co-conspirators publicly provided pre-textual and false justifications regarding their price increases. Defendants' public statements concerning the price of Vehicle Carrier Services created the illusion of competitive pricing controlled by market forces rather than supra-competitive pricing driven by Defendants' illegal conspiracy. Moreover, Defendants deceptively concealed their unlawful activities by mutually agreeing not to divulge the existence of the conspiracy to outsiders.

c. The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer injury and broad adverse impact on the public at large and harmed the public interest of North Carolina Plaintiffs and the Damages Classes in an honest marketplace in which economic activity is conducted in a competitive manner.

d. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

e. During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in North Carolina, and Defendants' illegal conduct substantially affected North Carolina commerce and consumers.

f. During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed Vehicle Carrier Services in North Carolina.

g. Plaintiffs and members of the Damages Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

255. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, et seq.

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout South Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Ann. §§ 39-5-10, et seq., and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

256. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Vermont.

b. Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Vehicle Carrier Services. Defendants owed a duty to disclose such facts, and Defendants breached that duty by their silence. Defendants misrepresented to all purchasers during the Class Period that Defendants' Vehicle Carrier Services prices were competitive and fair.

c. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

d. As a direct and proximate result of the Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.

e. Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of Vehicle Carrier Services, likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing Vehicle Carrier Services at prices set by a free and fair market. Defendants' misleading conduct and unconscionable activities constitutes unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

FOURTH CLAIM FOR RELIEF
Unjust Enrichment
(on behalf of Plaintiffs and the Damages Class)

257. Plaintiffs repeat and reallege the allegations set forth above.

258. Plaintiffs bring this claim under the laws of all states listed in the Second and Third Claims, *supra*.

259. As a result of their unlawful conduct described above and their violations of the antitrust and consumer protection laws set forth above, Defendants have and will continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on sales of Vehicle Carrier Services.

260. Defendants have benefited from their unlawful acts, and it would be inequitable for Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments made by Plaintiffs and the members of the Damages Class for Vehicle Carrier Services.

261. Plaintiffs and the members of the Damages Class are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct. Plaintiffs and the members of the Damages Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and the members of the Damages Class may make claims on a pro rata basis.

262. Pursuit of any remedies against the firms from whom Plaintiffs and the Damages Class members purchased Vehicles shipped by Defendants subject to Defendants' conspiracy would have been futile, given that those firms did not take part in Defendants' conspiracy.

PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request that:

1. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Auto Dealer Classes;

2. The unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

a. An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

b. A *per se* violation of Section 1 of the Sherman Act;

c. An unlawful combination, trust, agreement, understanding, and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and

d. Acts of unjust enrichment by Defendants as set forth herein.

3. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and the members of the Damages Class be entered against Defendants in an amount to be trebled to the extent such laws permit;

4. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully gained from them;

5. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

6. Plaintiffs and the members of the Damages Class be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment;

7. Plaintiffs and the members of the Auto Dealer Classes be awarded pre- and post- judgment interest as provided by law and that such interest be

awarded at the highest legal rate from and after the date of service of this Complaint;

8. Plaintiffs and the members of the Auto Dealer Classes recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

9. Plaintiffs and members of the Auto Dealer Classes have such other and further relief as the case may require and the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

DATED: June 2, 2014

Respectfully submitted,

/s/ Peter S. Pearlman

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE VEHICLE CARRIER SERVICES ANTITRUST LITIGATION *This Document Relates To All Actions*	**Master Docket No.: 13-3306 (ES)** **(MDL No. 2471)** **OPINION**

SALAS, DISTRICT JUDGE

I. INTRODUCTION

In this multidistrict litigation ("MDL"), purchasers of vehicle carrier services allege a conspiracy among ocean shipping companies to fix prices, allocate customers and routes, and restrict capacity. Direct Purchaser Plaintiffs ("DPPs") filed a consolidated class action complaint against Defendants[1] seeking treble damages and costs of suit under section 4 of the Clayton Act, 15 U.S.C. § 15, for violation of section 1 of the Sherman Act, 15 U.S.C. § 1. (D.E. No. 142, Direct Purchaser Plaintiff Consolidated Amended Class Action Complaint ("DPP Compl.") ¶ 4). Indirect Purchaser Plaintiffs ("IPPs") collectively include End-Payors, Automobile Dealers ("Auto Dealers"), and Truck & Equipment Dealers, each of whom filed consolidated class action complaints against Defendants seeking equitable and injunctive relief under section 16 of the Clayton Act, 15 U.S.C. § 26, for violation of section 1 of the Sherman Act, 15 U.S.C. § 1, and treble damages and costs of suit under various state antitrust, consumer protection, and unjust

[1] "Defendants" collectively include: Nippon Yusen Kabushiki Kaisha and NYK Line North America Inc. ("NYK Defendants"); Kawasaki Kisen Kaisha, Ltd. and "K" Line America, Inc. ("K-Line Defendants"); Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics America LLC, and EUKOR Car Carriers, Inc. ("WWL/EUKOR Defendants"); Compañía Sud Americana de Vapores, S.A. and CSAV Agency, LLC ("CSAV Defendants"); Höegh Autoliners AS and Höegh Autoliners, Inc. ("Höegh Defendants"); and Mitsui O.S.K. Lines, Ltd., Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc., and World Logistics Service (U.S.A.) Inc. ("MOL Defendants"). The Court notes that a "settlement in principal" was reached between certain IPPs and the K-Line Defendants, (July 23, 2015 Transcript ("Tr.") at 11), and additionally notes that a "settlement agreement" was reached between IPPs and the MOL Defendants, for which the parties "request that the Court stay all proceedings as they relate to [the MOL Defendants]." (D.E. No. 272 at 1). The Court nevertheless must necessarily address the consolidated motions, which include the K-Line Defendants and the MOL Defendants.

enrichment laws. (D.E. No. 183, End-Payor Plaintiff Second Consolidated Amended Class Action Complaint ("End-Payor Compl.") ¶¶ 11, 213–85; D.E. No. 199, Automobile Dealer Second Consolidated Amended Class Action Complaint ("Auto Dealer Compl.") ¶¶ 11, 213–60; No. 14-4469, D.E. No. 1, Truck and Equipment Dealer Class Action Complaint ("Truck Center Compl.") ¶¶ 12, 197–242).[2]

Before the Court are the following motions: Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 209); End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212); Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 218); Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214); Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227); and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230). The Court heard oral argument on July 23, 2015. (Tr.). Because the Shipping Act of

[2] End-Payors allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (End-Payor Compl. ¶¶ 213–53; *see also* Tr. at 107 (withdrawing Tennessee antitrust claim)); and they allege violation of the consumer protection laws of the District of Columbia and the following states: Arkansas, California, Florida, Hawaii, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, Rhode Island, South Carolina, Vermont. (End-Payor Compl. ¶¶ 254–85).

Auto Dealers allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (Auto Dealer Compl. ¶¶ 213–46); they allege violation the following state consumer protection laws: Arkansas, California, Florida, Massachusetts, Montana, New Mexico, New York, North Carolina, South Carolina, (Auto Dealer Compl. ¶¶ 247–58; *see also* Tr. at 107 (withdrawing Vermont consumer protection claim)); and they allege claims of unjust enrichment "under the laws of all states listed in the Second [state antitrust] and Third [state consumer protection] Claims." (Auto Dealer Compl. ¶ 260).

Truck and Equipment Dealers allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (Truck Center Compl. ¶¶ 197–228); they allege violation of the following state consumer protection laws: Arkansas, California, Florida, Massachusetts, Montana, New Mexico, New York, North Carolina, South Carolina, (Truck Center Compl. ¶¶ 229–40; *see also* Tr. at 107 (withdrawing Vermont consumer protection claim)); and they allege claims of unjust enrichment "under the laws of all states listed in the Second [state antitrust] and Third [state consumer protection] Claims." (Truck Center Compl. ¶ 242).

1984 bars Clayton Act claims and preempts state law claims under the theory of conflict preemption, the motions to dismiss are granted.

II. FACTUAL BACKGROUND

Defendants are ocean shipping companies engaged in the transportation of large numbers of cars, trucks, and other vehicles, including agricultural and construction equipment, between foreign countries and the United States using Roll On/Roll Off ("RO/RO") or specialized car carrier vessels. (DPP Compl. ¶¶ 16–22, 25–28; End-Payor Compl. ¶¶ 2, 59–72; Auto Dealer Compl. ¶¶ 2, 44–57; Truck Center Compl. ¶¶ 3, 45–47). As alleged in the complaints, "vehicle carrier services" refer to the paid ocean transportation of new, assembled motor vehicles by RO/RO or specialized vehicle carrier vessels. (End-Payor Compl. ¶ 2; Auto Dealer Compl. ¶ 2; Truck Center Compl. ¶ 3).

Defendants sell vehicle carrier services to original equipment manufacturers ("OEMs")—mostly large automotive, construction and agricultural manufacturers such as Honda, Volkswagen, Mitsubishi, Toyota, Nissan, and Subaru—which purchase vehicle carrier services from Defendants to transport vehicles manufactured by the OEMs outside of the United States to purchasers in the United States. (End-Payor Compl. ¶ 82; Auto Dealer Compl. ¶¶ 21, 23, 27, 33, 37, 39, 41; Truck Center Compl. ¶¶ 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43).

Both DPPs and IPPs allege that Defendants entered into various collusive, secret agreements to fix and increase the prices for vehicle carrier services to and from the United States. These include:

(i) coordination of price increases, (DPP Compl. ¶¶ 62, 63; End-Payor Compl. ¶¶ 125–30; Auto Dealer Compl. ¶¶ 113–18; Truck Center Compl. ¶¶ 108–18);

(ii) agreements not to compete, including coordination of responses to price reduction requests made by the OEMs and allocation of customers and routes, (DPP Compl. ¶¶ 64, 65; End-Payor Compl. ¶¶ 131–45; Auto Dealer Compl. ¶¶ 119–32; Truck Center Compl. ¶¶ 119–32); and

(iii) agreements to restrict capacity by means of agreed upon fleet reductions, (DPP Compl. ¶¶ 55–61; End-Payor Compl. ¶¶ 146–48; Auto Dealer Compl. ¶¶ 133–40; Truck Center Compl. ¶¶ 133–35).

DPPs allege they have directly purchased vehicle carrier services from Defendants, and were directly injured as a result. (DPP Compl. ¶¶ 13–15, 91). DPPs also "include companies that arrange for the international ocean transportation of vehicles." (*Id.* ¶ 30).

As mentioned above, IPPs include Auto Dealers, Truck & Equipment Dealers, and End-Payors. The Auto Dealers and the Truck & Equipment Dealers are automobile dealers and truck & equipment dealers, respectively, in the United States that allege that they purchased automobiles or trucks & equipment from the OEMs that were transported to the United States in Defendants' RO/RO or specialized vehicle carrier vessels. (Auto Dealer Compl. ¶¶ 21–43; Truck Center Compl. ¶¶ 21–44). The End-Payors are individuals who allege that they purchased or leased automobiles from Auto Dealers in the United States. (End-Payor Compl. ¶¶ 20–58). Each of the IPPs alleges that they are "indirect purchasers" of vehicle carrier services because, purportedly, the cost paid by the OEMs for vehicle carrier services was passed on to them as part of the purchase or lease price they paid for the automobiles or trucks. (End-Payor Compl. ¶¶ 10, 182, 183; Auto Dealer Compl. ¶¶ 10, 172–76; Truck Center Compl. ¶¶ 10, 157–62).

III. PROCEDURAL BACKGROUND

These civil antitrust actions were precipitated by the disclosure in September 2012 of raids upon certain Defendants' offices by governmental agencies in connection with antitrust investigations. (*See* DPP Compl. ¶¶ 66–71; End-Payor Compl. ¶¶ 6–8, 190–92; Auto Dealer Compl. ¶¶ 6–8, 184–86; Truck Center Compl. ¶¶ 4, 5, 7, 169–71). On May 24, 2013, the first of the cases that comprise this MDL was filed in this Court. (*See* D.E. No. 1). On October 8, 2013, the Judicial Panel on Multi-District Litigation selected this Court as the transferee court in this MDL for coordinated or consolidated pretrial proceedings, pursuant to 28 U.S.C. § 1407. (D.E. No. 21).[3]

On June 13, 2014, United States Magistrate Judge Joseph A. Dickson issued MDL Order Number 4, which set a global briefing schedule for the pending motions to dismiss. (D.E. No. 156). The motions were fully briefed and filed on January 26, 2015. The Court heard oral argument on July 23, 2015 and thereafter received supplemental briefing on the issue of conflict preemption.[4] The motions are now ripe for resolution.

IV. LEGAL STANDARD

To withstand a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"

[3] A review of the docket as of this writing indicates that this MDL currently consists of thirty-one member cases. (*See* No. 13-3306 docket sheet).

[4] The Court has reviewed and considered the following written submissions: End-Payor Plaintiff's Request for Judicial Notice (D.E. No. 212), and Defendants' Consolidated Brief in Opposition (D.E. No. 213); Defendants' Consolidated Motion to Dismiss the IPP Complaints (D.E. No. 209), IPP Opposition Brief (D.E. No. 210), Defendants' Consolidated Reply Brief (D.E. No. 211), End-Payor Letter Brief RE: *Oneok* (D.E. No. 251), Defendants' Consolidated Letter Brief in Response (D.E. No 252), Defendants' Consolidated Supplemental Brief RE: Conflict Preemption (D.E. No. 269), and IPP Supplemental Brief RE: Conflict Preemption (D.E. No. 270); Defendants' Consolidated Motion to Dismiss the DPP Complaint (D.E. No. 218), DPP Opposition Brief (D.E. No. 219), and Defendants' Consolidated Reply Brief (D.E. No. 220); EUKOR's Motion to Dismiss All Complaints (D.E. No. 214), DPP Opposition Brief (D.E. No. 215), IPP Opposition Brief (D.E. No. 216), and EUKOR Reply Brief (D.E. No. 217); Höegh's Motion to Dismiss the DPP Complaint (D.E. No. 227), DPP Opposition Brief (D.E. No. 228), and Höegh's Reply Brief (D.E. No. 229); Höegh's Motion to Dismiss the IPP Complaints (D.E. No. 230), IPP Opposition Brief (D.E. No. 231), and Höegh's Reply Brief (D.E. No. 232).

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

To determine the sufficiency of a complaint under *Twombly* and *Iqbal* in the Third Circuit, the court must take three steps: first, the court must take note of the elements a plaintiff must plead to state a claim; second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief. *See Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 221 (3d Cir. 2011) (citations omitted).

"In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of the public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010). Among the public records a court may examine in order to resolve a motion to dismiss is a judicial proceeding from a different court or case, but a court must be mindful of the distinction between the existence of a fact and its truth. *S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd.*, 181 F.3d 410, 426, 427 n.7 (3d Cir. 1999).

V. ANALYSIS

A. Clayton Act Claims for Damages and Injunctive Relief are Barred by the Shipping Act[5]

Defendants argue that claims for damages and injunctive relief under the Clayton Act are barred by the Shipping Act of 1984 (the "Shipping Act"). (D.E. No. 209-1 at 71; D.E. No. 218-1 at 3–11; D.E. No. 220 at 1–11; Tr. at 112–37, 156–62). The Shipping Act states that "[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by [the Shipping Act]." 46 U.S.C. § 40307(d). Defendants assert that the conduct alleged in the complaints by DPPs and IPPs—namely agreements to fix prices, allocate customers and routes, and restrict capacity—are "prohibited by" the Shipping Act, thus triggering the statutory bar against private antitrust actions under section 40307(d).

DPPs contend that agreements to restrict capacity are not prohibited by the Shipping Act and are therefore subject to private antitrust suits. First, DPPs argue that agreements to restrict capacity are outside of the purview of the Shipping Act and they point to the lack of explicit reference to "capacity restriction" in the Shipping Act and comments made by a former Commissioner of the Federal Maritime Commission ("FMC") in support. (D.E. No. 219 at 4–7). Second, they argue that even if agreements to restrict capacity were covered, they are not "prohibited acts" sufficient to trigger the bar against Clayton Act claims. (*Id.*).

DPPs concede that claims relating to price fixing and market allocation are prohibited by the Shipping Act and are thus non-actionable under section 40307(d)'s Clayton Act bar. (Tr. at 156). Thus, the precise issue before the Court is whether capacity restrictions, as alleged in the

[5] Although this point was addressed directly by DPPs for their claims for damages under the Clayton Act, IPPs incorporated and adopted DPPs' arguments with respect to their claims for injunctive relief under the Clayton Act. (D.E. No. 210 at 72–73).

complaints, are covered by the Shipping Act and subject to section 40307(d)'s statutory bar against private antitrust actions.

In the Third Circuit, "the first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. When the statutory language has a clear meaning, [the court] need not look further." *Valansi v. Ashcroft*, 278 F.3d 203, 209 (3d Cir. 2002) (internal citation and quotation omitted). "However, if the language of the statute is unclear, [the court] attempt[s] to discern Congress'[s] intent using the canons of statutory construction. If the tools of statutory construction reveal Congress'[s] intent, that ends the inquiry." *United States v. Cooper*, 396 F.3d 308, 310 (3d Cir. 2005), as amended (Feb. 15, 2005) (internal citations omitted). "If, on the other hand, [the court is] unable to discern Congress'[s] intent using tools of statutory construction, [the court] generally defer[s] to the governmental agency's reasonable interpretation." *Id.* at 310–11.

The Court finds that a plain reading of the Shipping Act reveals that capacity restrictions are prohibited by the Shipping Act and that DPPs' and IPPs' claims for damages and injunctive relief under Clayton Act are forbidden under section 40307(d). First, capacity restrictions are covered in the "Application" section of the Shipping Act, and so agreements among ocean common carriers (*i.e.*, Defendants) to restrict capacity are required to be filed with the FMC. Second, because ocean common carriers are prohibited from operating under an unfiled agreement that is required to be filed with the FMC, the Shipping Act provides an exemption for claims under the Clayton Act under section 40307(d). The Court discusses each in further detail below.

i. Agreements to Reduce Capacity Fall Within the Shipping Act Purview and Must be Filed with the FMC

The Shipping Act states that agreements between ocean common carriers falling within certain enumerated categories, 46 U.S.C. § 40301(a), "shall be filed" with the FMC, *id.* § 40302(a). Defendants argue that agreements to restrict capacity are covered by the Shipping Act, specifically section 40301(a), which states as follows:

> § 40301. Application
> (a) OCEAN COMMON CARRIER AGREEMENTS.—This part applies to an agreement between or among ocean common carriers to—
> (1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
> (2) pool or apportion traffic, revenues, earnings, or losses;
> (3) allot ports or regulate the number and character of voyages between ports;
> (4) regulate the volume or character of cargo or passenger traffic to be carried;
> (5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;
> (6) control, regulate, or prevent competition in international ocean transportation; or
> (7) discuss and agree on any matter related to a service contract.

46 U.S.C. § 40301(a). (D.E. No. 218-1 at 9–11; D.E. No. 220 at 3–5). DPPs argue that agreements to restrict capacity are not covered by the Shipping Act, as demonstrated by lack of explicit reference and the comments of a former Commissioner of the FMC. (D.E. No. 219 at 4–7).

The Court holds that a plain reading of the statutory language demonstrates that capacity restrictions, as alleged in the complaints, are covered by the Shipping Act. The complaints allege that Defendants reduced capacity by agreeing to "scrap" (*i.e.*, render non-usable) and "layup" (*i.e.*, take out of commission but not scrap) vessels. (DPP Compl. ¶ 56; End-Payor Compl. ¶ 123; Auto Dealer Compl. ¶ 111; Truck Center Compl. ¶ 106). DPPs allege that the capacity reductions were the result of a "conspiracy and were not caused by natural market

forces" and "resulted in artificially inflated prices for Vehicle Carrier Services." (DPP Compl. ¶¶ 55, 57). Similarly, IPPs allege that the capacity reductions were the result of "concerted, collusive efforts" and "caused prices to artificially rise." (End-Payor Compl. ¶ 124; Auto Dealer Compl. ¶ 112; Truck Center Compl. ¶ 107). These allegations plainly and unambiguously fit within the Shipping Act's parameters, specifically section 40301(a), as set forth above.

When "interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . . and the objects and policy of the law, as indicated by its various provisions . . . ." *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974) (quoting *Brown v. Duchesne*, 19 How. 183, 194, 15 L.Ed. 595 (1857)); *see also Cooper*, 396 F.3d at 313 ("The Whole Act Rule instructs that subsections of a statute must be interpreted in the context of the whole enactment.") (citation omitted).

The Court reads section 40301(a) as a whole to cover the type of capacity restrictions alleged by Plaintiffs. Most on point is subpart 6: allegations that Defendants conspired to reduce capacity is clearly an agreement to "control, regulate, or prevent competition." *Id.* § 40301(a)(6). Similarly, the allegations in the complaint also speak to an agreement to "regulate the number and character of voyages between ports," *id.* § 40301(a)(3), and an agreement to "regulate the volume or character of cargo or passenger traffic to be carried," *id.* § 40301(a)(4). More generally, the allegations suggest a "cooperative working arrangement." *Id.* § 40301(a)(5). Thus, the Court is satisfied that capacity reductions are covered by a plain reading of the Shipping Act's text. In addition, the regulations promulgated by the FMC further support the conclusion that capacity reductions are within the Shipping Act's purview. For example, 46 C.F.R. § 535.104(e) defines "capacity rationalization" as "a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size

or number of vessels or available space offered collectively or individually to shippers in any trade or service." *Id.* The regulations further state that an "agreement that contains the authority to discuss or agree on capacity rationalization" is subject to the Monitoring Report requirements, *id.* § 535.702(a)(1), and also indicate a requirement for a "narrative statement on any significant reductions in vessel capacity," *id.* § 535.703(c).

The personal remarks of FMC Commissioner Michael A. Khouri relied on by DPPs are not persuasive. (*See* D.E. No. 219 at 6–7, Ex. C). On May 13, 2010, Mr. Khouri made the following statement as part of a panel discussion at the "International Trade Symposium: Charting New Horizons":

> One final comment—recent reports of increases in annual transpacific contract rates have heightened shipper concerns that these rate hikes are facilitated by carriers using, first, their legal authority to discuss voluntary general rate guidelines with, second, discussions to agree on capacity restriction. The first discussion would be legal under the Shipping Act. The second discussions—if they occurred—would be outside of the Shipping Act purview and would therefore be a violation of the Sherman Act.

(D.E. No. 219, Ex. C at 2). The Court agrees with Defendants that: (i) DPPs' interpretation of the statement is inconsistent with the statutory language and regulations, (D.E. No. 220 at 9); (ii) the remarks are not entitled to *Chevron* deference because Mr. Khouri explicitly stated that his remarks were his personal views and were not offered as the official position of the FMC,[6] (*id.* at

[6] "*Chevron* deference" refers to *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which "directs courts to accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers." *Michigan v. E.P.A.*, 135 S. Ct. 2699, 2701 (2015).

> *Chevron* requires courts to conduct a two-step inquiry. Under the first step, "[w]hen a court reviews an agency's construction of the statute which it administers," it must ask 'whether Congress has directly spoken to the precise question at issue." [*Chevron*, 467 U.S.] at 842. If Congress has resolved the question, the clear intent of Congress binds both the agency and the court." *Id.* . . . Under the second step, if "Congress has not directly addressed the precise question at issue," because "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." [*Id.*] at 843.

Hagans v. Comm'r of Soc. Sec., 694 F.3d 287, 294 (3d Cir. 2012) (parallel citation omitted). Here, even if for argument's sake the first step were satisfied, a clear "guiding principle" from the Third Circuit is that "*Chevron*

10); (iii) the remarks can alternatively be interpreted as simply indicating that unfiled agreements (*i.e.*, agreements that lack "legal authority") are outside of the Shipping Act purview, as opposed to agreements involving capacity reductions, (Tr. at 132–33); and (iv) consistent with the Shipping Act, Mr. Khouri's reference to a Sherman Act violation more likely is in reference to criminal liability as opposed to private antitrust actions, (*id.*).

Thus, the Court finds that agreements to restrict capacity are covered by the Shipping Act. As a result, agreements to restrict capacity are required to be filed with the FMC. Specifically, section 40302 states that, "[a] true copy of every agreement referred to in section 40301(a) . . . of this title *shall be filed* with the Federal Maritime Commission. If the agreement is oral, a complete memorandum specifying in detail the substance of the agreement *shall be filed*." 46 U.S.C. § 40302(a) (emphasis added). Agreements to restrict capacity are "referred to" in section 40301(a) and thus must be filed under section 40302(a). Here, DPPs and IPPs allege—and Defendants do not dispute—that the agreements to reduce capacity were not filed with the FMC. (*See* DPP Compl. ¶ 72; End-Payor Compl. ¶ 195; Auto Dealer Compl. ¶ 189; Truck Center Compl. ¶ 174).

ii. The Statutory Bar Against Private Antitrust Actions Applies because Ocean Common Carriers are Prohibited from Operating Under an Unfiled Agreement to Reduce Capacity

Section 40307(d) states that "[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by [the Shipping Act]." 46 U.S.C. § 40307(d). Defendants argue

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deference is inappropriate for informal agency interpretations," *id.* at 300 n.14 (citation and internal quotation marks omitted), let alone remarks such as Mr. Khouri's that are expressly disclaimed as personal views. (*See* D.E. No. 219, Ex. C ("My remarks today reflect my personal views and thoughts and are not offered as the official position of the United States or the Federal Maritime Commission.")). Thus, Mr. Khouri's remarks are clearly not entitled to *Chevron* deference.

that the statutory bar against Clayton Act claims is triggered because ocean common carriers are prohibited from operating under an unfiled agreement to restrict capacity, under the "general prohibitions" outlined in the Shipping Act. (D.E. No. 209-1 at 71; D.E. No. 218-1 at 3–11; D.E. No. 220 at 1–11; Tr. at 112–37, 156–62) (citing to 46 U.S.C. § 41102(b)). DPPs contend that operating under unfiled agreements to restrict capacity are not "prohibited acts" sufficient to trigger the bar against Clayton Act claims. (D.E. No. 219 at 4–7). In their briefs, DPPs discussed the lack of reference to capacity restrictions in the "Prohibitions and Penalties" chapter of the Shipping Act. (*Id.*). At oral argument, however, DPPs focused on the "general prohibitions" section.[7] (*See* Tr. at 137–56).

The Court agrees with Defendants and finds that because ocean common carriers are prohibited from operating under an unfiled agreement that is required to be filed with the FMC, the Shipping Act provides an exemption for claims under the Clayton Act.

Chapter 411 of the Shipping Act is entitled "Prohibitions and Penalties" and is comprised of nine sections. *See* 46 U.S.C. §§ 41101–41109. Prohibited acts include, for example, certain disclosures of information, *id.* § 41103, unreasonably refusing to deal, *id.* § 41104(10), and concerted action among common carriers to allocate shippers, *id.* § 41105(6). Although capacity restrictions are not explicitly referenced within the sections of chapter 411, this is not dispositive as DPPs contend, because of the broad scope of the "general prohibitions" section.[8]

Section 41102 of the Shipping Act covers "general prohibitions" and states in relevant part: "[a] person may not operate under an agreement required to be filed under section 40302

[7] Although the Court indicated on the record that it might not consider this argument due to waiver resulting from failure to include it in the opposition brief, (*see* Tr. 148), the Court accepts it and takes it under consideration for purposes of deciding the instant motions.

[8] The Court also notes that other activities that are clearly covered by the Shipping Act (*e.g.*, price fixing) likewise are not explicitly included in the "Prohibitions and Penalties" chapter.

. . . if . . . the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled." 46 U.S.C. § 41102(b)(1). As detailed *supra*, agreements relating to capacity restrictions are required to be filed under section 40302. While Defendants argue that the unfiled agreements to restrict capacity at issue fall within section 41102(b)(1)—*i.e.*, that they are prohibited from operating under unfiled agreements relating to capacity restrictions—DPPs contend that section 41102(b)(1) is triggered only if an agreement is filed under section 40304. In other words, DPPs assert that ocean common carriers are prohibited from operating under an agreement to restrict capacity only if they file the agreement with the FMC and it then does not "become effective." (*See* Tr. at 149–52). Taken to its conclusion, under DPPs' reading, if an agreement to reduce capacity is not filed with the FMC, then the parties to that agreement are subject to private antitrust suits. But the language of section 41102(b)(1) does not plainly and unambiguously necessitate the conclusion advanced by DPPs. The Court disagrees with DPPs' interpretation because it results in surplusage and is inconsistent with the overall statutory scheme and the legislative history.

First, DPPs' reading appears to result in surplusage. Under section 40304, a filed agreement that is not rejected becomes effective after forty-five days. *See* 46 U.S.C. § 40304(c) ("Unless rejected . . . an agreement . . . is effective on the 45th day after filing . . . .) (internal punctuation and subdivision omitted). Thus, under DPPs' reading of section 41102(b)(1), the phrase "or has been rejected" would be surplusage because if an agreement "has not become effective under section 40304," it necessarily must have been rejected according to section 40304. Therefore, the fact that "or has been rejected" is in the statute cuts against DPPs interpretation. *See Ki Se Lee v. Ashcroft*, 368 F.3d 218, 223 (3d Cir. 2004) (recognizing "the goal of avoiding surplusage in construing a statute").

Second, section 41102(b)(1) can just as easily be read to support Defendants' position. For example, the section can be interpreted to prohibit ocean common carriers from operating under an agreement required to be filed simply *if* it has not been filed. In other words, whereas DPPs' interpretation reads the "if" as a prerequisite to filing with the FMC, the "if" can also be read to explain that ocean common carriers are prohibited from operating under "secret" agreements that did not "become effective" because they were never filed in the first place. Where there is more than one reasonable reading of the statute, the Court is guided by the canons of statutory construction. *See Cooper*, 396 F.3d at 310. "When the language of a statute is ambiguous, [courts] look to its legislative history to deduce its purpose." *United States v. Hodge*, 321 F.3d 429, 437 (3d Cir. 2003); *United States v. Gregg*, 226 F.3d 253, 257 (3d Cir. 2000) ("Where the statutory language does not express Congress's intent unequivocally, a court traditionally refers to the legislative history and the atmosphere in which the statute was enacted in an attempt to determine the congressional purpose.").

The legislative history directly supports Defendants' interpretation of section 41102(b)(1). *See* Report of the House Committee on Merchant Marine and Fisheries, H.R. Rep. No. 98-53, pt. 1, at 12 (1983), *reprinted in* 1984 U.S.C.C.A.N. 167, 177 (hereinafter "House Report").[9] The House Report explicitly discusses antitrust immunity:

> [I]f parties who could avail themselves of antitrust immunity by submitting to regulation under the terms of the Shipping Act of [1984] fail to do so, then their knowing conduct, undertaken without the benefit of an agreement being filed and in effect, will subject them to limited antitrust exposure. The antitrust exposure for these so-called "secret" agreements is limited to injunctive and criminal prosecution by the Attorney General, and does not carry with it any private right of action otherwise available under the antitrust laws.

[9] *See* D.E. No. 209-13, Ex. K to Defendants' Brief in Support of their Motion to Dismiss IPPs Complaints.

House Report at 12, 177. As an initial matter, the legislative history specifically references "secret" agreements as opening the door to antitrust exposure. *Id.* But an agreement filed with the FMC under section 40304—as DPPs contend is required under section 41102—could not realistically be considered "secret." *See* Black's Law Dictionary 1556 (10th ed. 2014) (defining "secret" as "[s]omething that is kept from the knowledge of others or shared only with those concerned; something that is studiously concealed"). More to the point, the legislative history specifically states that a "secret" agreement was not intended to give rise to private antitrust actions. As a whole, the legislative history clearly supports Defendants' interpretation of section 41102(b)(1): if an ocean common carrier enters into an agreement to reduce capacity, and that agreement is not filed with the FMC under section 40304, then the carrier will be subject to injunctive and criminal prosecution by the Attorney General, but not private antitrust actions. House Report at 12, 177 ("The antitrust exposure for . . . so-called 'secret' agreements is limited to injunctive and criminal prosecution by the Attorney General, and does not carry with it any private right of action otherwise available under the antitrust laws.").

The Court therefore finds that the most natural reading of section 41102(b)(1) is that it prohibits ocean common carriers from operating under an unfiled agreement to reduce capacity. Here, as noted *supra*, DPPs and IPPs allege—and Defendants do not dispute—that the agreements to reduce capacity were not filed with the FMC. (*See* DPP Compl. ¶ 72; End-Payor Compl. ¶ 195; Auto Dealer Compl. ¶ 189; Truck Center Compl. ¶ 174). Thus, DPPs and IPPs allege that Defendants engaged in conduct prohibited by the Shipping Act. Accordingly, because "[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by

[the Shipping Act]," 46 U.S.C. § 40307(d), DPPs' claim under section 4 of the Clayton Act and IPPs' claims under section 16 of the Clayton Act will be dismissed with prejudice.[10]

B. The State Law Claims At Issue are Conflict Preempted by the Shipping Act

Defendants argue that IPPs' state antitrust and consumer protection claims are impliedly preempted by the Shipping Act and within the exclusive federal jurisdiction of the FMC. First, Defendants argue that Congress intended for the Shipping Act to occupy the field and to displace state law relating to international maritime commerce. (*See* D.E. No. 209 at 52–61; D.E. No. 211 at 36–40). In the alternative, Defendants argue that state laws conflict with the Shipping Act because they stand as an obstacle to Congress's underlying objectives. (D.E. No. 211 at 40–44; D.E. No. 269 at 2–18).

IPPs contend that Defendants have not met their high burden in showing that preemption applies. IPPs argue that there is no indication that Congress intended for the Shipping Act to occupy the entire field with respect to international maritime commerce. (D.E. No. 210 at 53–64). In a supplemental filing, IPPs argue that conflict preemption is a narrow doctrine that does not apply here because there is no actual conflict between state laws and the Shipping Act, (D.E. No. 270 at 7–12); Congress chose not to limit state antitrust laws when it passed the Shipping Act, (*id.* at 12–14); every court to address whether the Shipping Act preempts state law has held

[10] DPPs argue that the Court should "discount" arguments made by CSAV and K-Line with respect to the statutory bar against private antitrust actions. (*See* D.E. No. 219 at 7–10). DPPs contend that it would be "manifestly unjust" to permit them to raise such arguments when the sentencing Judge in the related criminal actions referenced the pending civil actions when ordering no restitution. (*Id.*). The Court agrees with Defendants that merely acknowledging the existence of civil claims during the plea agreement does not preclude the arguments here, especially because: (i) the Shipping Act was not addressed as part of the criminal proceedings; (ii) CSAV and K-Line did not waive any arguments with respect to the Shipping Act; (iii) even if they had waived a Shipping Act argument, it would not permit a cause of action that is otherwise prohibited by the statute; (iv) there is no indication that approval of the guilty pleas was predicated on civil damages recovery; and (v) plaintiffs can seek reparations through the FMC via 46 U.S.C. § 41305. Thus, the Court finds that DPPs have not established that CSAV and K-Line should be precluded from making arguments with respect to the statutory bar against private antitrust actions. The Court's ruling with respect to section 40307(d) applies to CSAV and K-Line.

that it does not, (*id.* at 14–16); and Defendants' reliance on an isolated excerpt from the legislative history is misleading, (*id.* at 16–20).

Article VI of the Constitution provides that the laws of the United States "shall be the supreme Law of the Land; . . . any Thing in the Constitution or laws of any state to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. As a result, under the doctrine of preemption, "any state law, however clearly within a State's acknowledged power, must yield if it interferes with or is contrary to federal law." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 89 (1992). "Preemption can apply to all forms of state law, including civil actions based on state law." *Farina v. Nokia Inc.*, 625 F.3d 97, 115 (3d Cir. 2010). "For the purposes of preemption analysis, it is the cause of action, and not the specific relief requested, that matters. Preemption speaks in terms of claims, not in terms of forms of relief." *Id.* at 133.

"'Often Congress does not clearly state in its legislation whether it intends to pre-empt state laws . . . .'" *Delaware & Hudson Ry. Co. v. Knoedler Mfrs., Inc.*, 781 F.3d 656, 661 (3d Cir. 2015), *pet. for cert. docketed*, No. 14-1359 (May 14, 2015) (quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978)). "When that is the case, 'courts normally sustain local regulation of the same subject matter unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States.'" *Id.* In other words, state law can be impliedly preempted under the doctrines of field preemption and conflict preemption.

Under field preemption, "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012).

> The intent to displace state law altogether can be inferred from a framework of regulation "so pervasive . . . that Congress left no room for the States to supplement it" or where there is a "federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."

Id. (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). "To determine the boundaries that Congress sought to occupy within the field, [courts] look to the federal statute itself, read in the light of its constitutional setting and its legislative history." *Lozano v. City of Hazleton*, 724 F.3d 297, 303 (3d Cir. 2013) *cert. denied sub nom*. *City of Hazleton, Pa. v. Lozano*, 134 S. Ct. 1491 (2014) (internal quotation and citation omitted).

By contrast, "[c]onflict pre-emption can occur in one of two ways: where 'compliance with both federal and state regulations is a physical impossibility,' or 'where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Lozano*, 724 F.3d at 303 (quoting *Arizona*, 132 S. Ct. at 2501). "Courts must utilize their judgment to determine what constitutes an unconstitutional impediment to federal law, and that judgment is 'informed by examining the federal statute as a whole and identifying its purpose and intended effects.'" *Id.* (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000)). But mere "tension" between federal and state law is "generally not enough" to show an obstacle supporting preemption; rather the "repugnance or conflict" must be "so direct and positive that the two acts cannot be reconciled or consistently stand together." *MD Mall Assocs., LLC v. CSX Transp., Inc.*, 715 F.3d 479, 495 (3d Cir. 2013), *as amended* (May 30, 2013), *cert. denied*, 134 S. Ct. 905 (2014) (citation and internal quotation marks omitted).

Two overarching principles guide the analysis. *See Farina*, 625 F.3d at 115. First, congressional intent is the "ultimate touchstone" in preemption analysis. *Cipollone v. Liggett*

Grp., Inc., 505 U.S. 504, 516 (1992) (internal quotation and citation omitted). Second, courts generally apply a presumption against preemption, *see id.*, but the presumption is not absolute. *See United States v. Locke*, 529 U.S. 89, 108 (2000) ("[A]n 'assumption' of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence."); *cf. Wyeth v. Levine,* 555 U.S. 555, 565 n.3 (2009) (noting that the presumption against preemption "accounts for the historic presence of state law but does not rely on the absence of federal regulation"). In other words, "[t]he presumption [against preemption] applies with particular force in fields within the police power of the state, but does not apply where state regulation has traditionally been absent." *Farina*, 625 F.3d at 116 (internal citations omitted).

Here, the Court finds that the state laws at issue conflict with the Shipping Act and are therefore preempted because they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Paramount to the Court is the Shipping Act's express purpose of minimizing government intervention and regulatory costs coupled with exemptions from private antitrust actions under the Clayton Act and the ability of any person to bring claims before the FMC.

i. The Court Does Not Address Whether the Presumption Against Preemption Applies

Several public policy concerns are implicated in the determination of whether a presumption against preemption applies. On the one hand, "monopolies and unfair business practices" are "area[s] traditionally regulated by the States." *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989); *see also Pac. Merch. Shipping Ass'n v. Goldstene*, 639 F.3d 1154, 1167 (9th Cir. 2011) (applying the presumption against preemption in maritime-related action,

"[g]iven the 'historic presence of state law' in the area of air pollution"). "In areas of traditional state regulation, we assume that a federal statute has not supplanted state law unless Congress has made such an intention clear and manifest." *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) (internal quotation marks omitted).

On the other hand, the field of national and international maritime commerce is a field "where the federal interest has been manifest since the beginning of the Republic and is now well established." *Locke*, 529 U.S. at 90. Where state laws "bear upon national and international maritime commerce, . . . there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers. Rather, [courts] must ask whether the local laws in question are consistent with the federal statutory structure . . . ." *Id.* at 108.

The Court is thus confronted with a scenario where laws within areas of traditional state regulation (monopolies and unfair business practices) touch upon a field where state regulation has traditionally been absent (international maritime commerce). However, the Court declines to reach a conclusion as to whether a presumption against preemption applies in this context because it finds that the state laws at issue present a sufficient obstacle to the objectives of Congress. *Crosby*, 530 U.S. at 374 n.8 ("We leave for another day a consideration in this context of a presumption against preemption. Assuming, *arguendo*, that some presumption against preemption is appropriate, we conclude, based on our analysis below, that the state Act presents a sufficient obstacle to the full accomplishment of Congress's objectives under the federal Act to find it preempted.").

ii. The State Laws are an Obstacle to the Accomplishment of Congress's Objective of Minimal Government Intervention and Regulatory Costs

The Shipping Act has four stated purposes, two of which are pertinent here:

> (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs; . . . [and]
> (4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

46 U.S.C. § 40101.

Defendants argue that IPPs' proposed application of state law stands as an obstacle to the first purpose. (*See* D.E. No. 269 at 4–5). In short, Defendants contend that Congress intended to create an "exclusive system of redress" through the FMC for violations of the Shipping Act and that subjecting the ocean shipping industry to the laws of fifty separate states for the same conduct conflicts with Congress's purpose. (*Id.*).[11]

IPPs argue that their proposed application of state law does not conflict with the purposes of Congress and that the first purpose relied on by Defendants is "not implicate[d] . . . in a material way." (D.E. No. 270 at 10–11). Instead, IPPs focus on the fourth purpose—competitive and efficient ocean transportation—and contend that private actions under state law merely complement the FMC and DOJ's enforcement of federal law. (*Id.*).

[11] IPPs argue that CSAV and K-Line should be judicially estopped from invoking preemption because they took an "inconsistent position" when they pleaded guilty to the criminal charges. (*See* D.E. No. 210 at 63–64). The Court does not agree. Judicial estoppel applies only if the "(1) the party to be estopped is asserting a position that is irreconcilably inconsistent with one he or she asserted in a prior proceeding; (2) the party changed his or her position in bad faith, *i.e.*, in a culpable manner threatening to the court's authority or integrity; and (3) the use of judicial estoppel is tailored to address the affront to the court's authority or integrity." *Montrose Med. Group Participating Sav. Plan v. Bulger*, 243 F.3d 773, 777–78 (3d Cir. 2001). Judicial estoppel is a narrow doctrine because it is "an extraordinary remedy that should be employed only when a party's inconsistent behavior would otherwise result in a miscarriage of justice." *Id.* at 784 (citation and internal quotation marks omitted). For the reasons stated in footnote 10, *supra*, IPPs have not demonstrated that judicial estoppel applies. Thus, the Court's holding with respect to preemption applies to CSAV and K-Line.

Although the Court agrees with IPPs that the state laws at issue may complement the fourth purpose of the Shipping Act—a point not contested by Defendants—the Court cannot simply disregard the Act's *first* stated purpose. Instead, the Court agrees with Defendants that the state laws at issue conflict with the Act's first purpose of minimizing government intervention and regulatory costs. Accordingly, the state law claims shall be dismissed as preempted.

The Shipping Act states that agreements between ocean common carriers falling within certain enumerated categories, 46 U.S.C. § 40301(a), "shall be filed" with the FMC, *id.* § 40302(a). If such agreements are filed and become effective, the "antitrust laws do not apply" and the carrier is immune from criminal and civil liability under the Sherman Act and Clayton Act, respectively. 46 U.S.C. § 40307(a); *see also id.* § 40102(2) (defining "antitrust laws" to include the Sherman Act and Clayton Act). On the other hand, if such agreements are not filed with the FMC, then the carrier is subject to criminal liability under the Sherman Act and to sanctions and penalties by the FMC, but private antitrust actions under the Clayton Act remain barred. 46 U.S.C. §§ 41102(b)(1); 40307(d); *see also* Part V.A, *supra*.

Any person may file a complaint with the FMC for violations of the Shipping Act, and may seek reparations for injury if the complaint is filed within three years of the date of accrual. 46 U.S.C. § 41301; *see also* 46 C.F.R. § 502.62 (outlining FMC complaint process). The FMC may award reparations up to double actual damages, *id.* § 41305, and the person to whom the award was made can seek enforcement of the award in a district court, *id.* § 41309. The FMC has broad investigatory powers, including the ability to subpoena witnesses and evidence, *id.* § 41303(a)(1), and issue sanctions for delay, *id.* § 41302(d), which can be enforced via application to a district court, *id.* § 41308. In other words, the FMC possesses power not unlike a district

court. *Fed. Mar. Comm'n v. S. Carolina State Ports Auth.*, 535 U.S. 743, 759 (2002) ("[T]he similarities between FMC proceedings and civil litigation are overwhelming."). Thus, "while no private party may sue for damages or for injunctive relief under the antitrust laws for conduct [prohibited by the Shipping Act], the FMC is empowered to order reparations, including double damages, to impose sanctions and penalties for prohibited conduct, and to file suit in federal district court against the offending party." *A & E Pac. Const. Co. v. Saipan Stevedore Co.*, 888 F.2d 68, 71 (9th Cir. 1989).

The Shipping Act is undeniably silent on the availability of private remedies under state law. The Shipping Act defines "antitrust laws" solely by reference to federal antitrust laws, 46 U.S.C. § 40102(2), and specifically bars actions under the Clayton Act for unfiled agreements, *see* 46 U.S.C. §§ 40307(d), 41102(b)(1), but makes no mention of state law remedies. IPPs argue that it can be implied that Congress chose not to preempt state laws. (*See* D.E. Nos. 210 at 57–61, 270 at 12–14). Defendants counter that the lack of reference to state laws is irrelevant. (*See* D.E. No. 269 at 16–17). The Court agrees with Defendants that the Shipping Act's silence on the availability of private remedies under state law does not necessitate a finding of no preemption.

First, the Court does not find that silence weighs against preemption here. If silence with respect to state laws was dispositive, then the Shipping Act's grant of immunity from the "antitrust laws" for filed and effective agreements would apply only to federal laws, given the explicit statutory definition in 46 U.S.C. § 40102(2). Thus, under a plain reading of the statute, if an agreement is filed and effective and an ocean common carrier is entitled to full immunity from antitrust liability under the Sherman Act and Clayton Act, a state attorney general or consumer could nevertheless pursue antitrust claims against the carrier for the same agreement

under state law.[12] Although this scenario is admittedly hypothetical (since the facts before the Court involve an unfiled, secret agreement), it demonstrates that the Shipping Act's silence with respect to state law is not dispositive, because such a result is borderline absurd and is clearly at odds with Congress's intent.

Second, the Court is not convinced that specific reference to the Clayton Act in the context of unfiled agreements necessarily implies that state law claims are permitted. Given the outsized federal role in the area of national and international maritime commerce as compared to the states, *see Locke*, 529 U.S. at 99, 108, it does not follow that Congress ever envisaged that myriad state laws would be applied to regulate international maritime commerce. Accordingly, the Court is not persuaded by IPPs' arguments that cases such as *Wyeth* are on point here. (*See* D.E. No. 210 at 59–60; D.E. No. 270 at 12). *Wyeth* stands in part for the proposition that silence on the issue of preemption coupled with awareness of state causes of action in that particular field is evidence that Congress did not intend to preempt state law claims. *Wyeth v. Levine*, 555 U.S. at 575 ("'The case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them.'") (quoting *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166–67 (1989)). There is nothing in the Shipping Act which suggests that Congress ever indicated its awareness of the operation of state law in the field of national and international maritime commerce when it explicitly carved out causes of action under federal antitrust law. To the contrary, as IPPs themselves point out, the legislative history is "bereft of meaningful discussion of state antitrust laws." (D.E. No. 270 at 16–17). This lack of discussion makes sense given the dearth of state

[12] Notwithstanding IPPs' conclusory position that state antitrust laws would not apply to a filed and effective agreement. (D.E. No. 270 at 7).

tort litigation in the field of national and international maritime commerce when Congress passed the Shipping Act. Indeed, as IPPs note, "in the [Shipping] Act's decades long history, *this* action is the first to present the question of state antitrust law's applicability." (D.E. No. 270 at 6 n.1) (emphasis in original). In contrast, when Congress passed federal drug labeling laws it was "certain[ly] aware[]" of the "prevalence of state tort litigation" related to pharmaceuticals. *Wyeth*, 555 U.S. at 575. Thus, cases such as *Wyeth* are distinguishable

In any event, "neither an express pre-emption provision nor a saving clause bars the ordinary working of conflict pre-emption principles." *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 352 (2001) (citation and internal quotation marks omitted). In other words, even if the Shipping Act were not silent and had indicated approval of state law claims, they could still be subject to conflict preemption.

The legislative history further supports a finding of conflict preemption. "The Shipping Act of 1984 was intended to clarify and broaden the antitrust immunity provided by the previous Shipping Act of 1916." *Seawinds Ltd. v. Nedlloyd Lines, B.V.*, 80 B.R. 181, 184 (N.D. Cal. 1987) *aff'd*, 846 F.2d 586 (9th Cir. 1988). Judicial interpretations had narrowed the scope of antitrust immunity provided by the Shipping Act of 1916 and created parallel jurisdiction between the regulatory agency and the federal courts in certain cases. *Id.* (citation omitted). Ameliorating the regulatory uncertainty caused by erosion of the protections of the Shipping Act of 1916 was a key concern of at least the Committee on Merchant Marine and Fisheries in crafting the remedial scheme provided in the Shipping Act of 1984:

> To avoid the uncertainty created by the vagueness of the 1916 Shipping Act, the Committee intends that violations of this Act not result in the creation of parallel jurisdiction over persons or matters which are subject to the Shipping Act of [1984]; the remedies and sanctions provided in the Shipping Act of [1984] will be the exclusive remedies and sanctions for violations of the Act.

House Report at 12, 177; *see also Am. Ass'n of Cruise Passengers, Inc. v. Carnival Cruise Lines, Inc.*, 911 F.2d 786, 792 (D.C. Cir. 1990) ("Congress was concerned about a carrier being subject to 'parallel jurisdiction,' *i.e.* remedies and sanctions for the same conduct made unlawful by both the Shipping Act and the antitrust laws."). Furthermore, it was intended that the FMC be "provided exclusive jurisdiction in administering all of the provisions of the Shipping Act as they relate to international liner shipping regulations." House Report at 3, 168.[13]

Thus, "[t]he Shipping Act of 1984 was designed in part to clarify the remedies available and the proper forum for pursuing them." *Seawinds*, 80 B.R. at 184. As noted above, any person may file a complaint with the FMC for alleged violations of the Shipping Act, and a complainant may receive up to double damages as reparations. 46 U.S.C. §§ 41301, 41305. This remedial scheme was created "[i]n order to counterbalance the elimination of the deterrent force of antitrust laws . . . ." *Seawinds*, 80 B.R. at 184.

In sum, "[a]mong the major purposes to be accomplished by the Shipping Act of 1984 were clarification of antitrust immunity for international ocean carriers, vesting in the Federal Maritime Commission of exclusive jurisdiction over administration of the Shipping Act's provisions, and minimizing government involvement in regulation of shipping operations." *Id.* (citing House Report at 3–4, 168–69). "By limiting jurisdiction to the FMC, and restricting that Commission's regulatory scope, Congress implemented the goal of reducing government

[13] IPPs argue that legislative history which addresses the exclusivity of civil remedies under the Shipping Act should be characterized as "misleading." (*See* D.E. No. 270 at 16–20). IPPs contend that such comments are ambiguous, and that the Court should focus primarily on the statutory text and discount "cherry-picked" legislative history because the final statutory text was the result of hard-won compromise. (*Id.*). Although it is true that statements of a particular committee cannot be said to stand for the view of Congress more generally, so long as these statements are read as a part of the statute and Congress's intent as a whole, the Court does not think it improper to consider these portions of the legislative history. "Courts must utilize their judgment to determine what constitutes an unconstitutional impediment to federal law, and that judgment is 'informed by examining the federal statute as a whole and identifying its purpose and intended effects.'" *Lozano*, 724 F.3d at 303 (quoting *Crosby*, 530 U.S. at 373 (2000)).

involvement in shipping operations. By removing the courts from this regulatory process, Congress removed the potential for continuing regulatory uncertainty." *Id.* at 184–85.

Despite the persuasive legislative history and caselaw in support, it is true that Defendants did not provide—and the Court could not locate—a case explicitly holding that the Shipping Act impliedly preempts state law claims. Nevertheless, the Court is not otherwise persuaded by the cases cited by IPPs. For example, although *Oneok, Inc. v. Learjet, Inc.* stands for the proposition that the "broad applicability of state antitrust law supports a finding of no [field] pre-emption," 135 S. Ct. 1591, 1601 (2015), the *Oneok* Court expressly declined to engage in conflict preemption analysis, *see id.* at 1595, 1602. Similarly, in *Aubry* and *Wylie*, reference to the "Shipping Act" is to a different statute than the one before the Court here,[14] and the facts are readily distinguishable since the issue was whether additional employee-related requirements under state law, such as the payment of a higher rate of wages or hiring of additional crew members, conflicted with the statute. *See Pac. Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409 (9th Cir. 1990) (holding that California overtime pay laws not preempted by 46 U.S.C. § 8104(b)); *Wylie v. Foss Mar. Co.*, No. 06-7228, 2008 WL 4104304 (N.D. Cal. Sept. 4, 2008) (relying on *Aubry* to conclude that California labor statutes not preempted by 46 U.S.C. § 8104(b)). And although the Texas Court of Appeals held in *Zachry-Dillingham v. American President Lines, Ltd.* that conflict preemption did not operate to bar a claim relating to tariff rates under the Texas Deceptive Trade Practices Act ("DTPA"), that decision is entirely devoid of analysis with respect to Congress's purposes of minimizing government intervention and regulatory costs. *See* 739 S.W.2d 420, 423 (Tex. App. 1987), *writ denied* (Jan. 27, 1988) ("The

[14] *Compare* 46 U.S.C. §§ 2101–14701 (Subtitle II – Vessels and Seamen), *with* 46 U.S.C. §§ 40101–41309 (Subtitle IV – Regulation of Ocean Shipping). Indeed, Subtitle II does not mention the FMC, and instead references the Department of Homeland Security. *See, e.g.*, 46 U.S.C. § 2104 note.

grant of immunity from the Texas DTPA would provide carriers with a shield whose existence is not directly related to the accomplishment or the purpose of the tariff filing requirements. Immunity . . . is not necessary to the accomplishment of any congressional objective expressed by the Shipping Act."). These cases are thus distinguishable from the Court's analysis.

With this history and caselaw in mind, the Court concludes that IPPs' proposed application of state law conflicts with the congressional purpose of minimizing government intervention and regulatory costs. 46 U.S.C. § 40101(1). Permitting private actions under a patchwork of state laws for the same exact conduct that is exempt from federal antitrust law, 46 U.S.C. § 40307(d), and within the purview of the FMC complaint process, *id.* § 41301, directly undermines the "certainty and predictability" Congress sought to achieve in passing the Shipping Act of 1984. *See* House Report at 4, 169; *see also id.* at 25, 190 ("[T]o the greatest extent possible, members of the ocean liner industry should be . . . free of . . . vague standards, or threatened penalties under changing interpretations of antitrust laws."). The state laws at issue cannot consistently stand together with the statutory scheme and Congress's stated purposes in passing the Shipping Act of 1984 and are therefore preempted.[15] In reaching this holding the Court emphasizes that the putative class members can seek relief before the FMC, 46 U.S.C. § 41301(a), and then bring actions in district court as appropriate and consistent with Congress's full intent, *see* 46 U.S.C. § 41306 (after filing complaint with FMC, complainant may bring civil action in a district court for injunctive relief); *id.* § 41309 (injured party who is awarded reparations by the FMC may seek enforcement of the order in a district court).

[15] Because the Court concludes that the state laws at issue conflict with the federal law, it does not address whether field preemption applies. *See Crosby*, 530 U.S. at 374 n.8 (declining to address field preemption after finding of conflict preemption).

VI. CONCLUSION

For the reasons above, the motions to dismiss are granted. An appropriate Order accompanies this Opinion.

s/ *Esther Salas*
Esther Salas, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE VEHICLE CARRIER SERVICES ANTITRUST LITIGATION *This Document Relates To All Actions*	**Master Docket No.: 13-3306 (ES)** **(MDL No. 2471)** **ORDER**

SALAS, DISTRICT JUDGE

Before the Court are the following motions: Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 209); End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212); Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 218); Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214); Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227); and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230).

For the reasons set forth in the Court's corresponding Opinion,

IT IS on this 28th day of August 2015, hereby

ORDERED that End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212), is GRANTED; and it is further

ORDERED that Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 209), and Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 218), are GRANTED; and it is further

ORDERED that Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214), Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227), and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230), are DENIED as moot; and it is further

ORDERED that the Complaints at issue—D.E. No. 142, Direct Purchaser Plaintiff Consolidated Amended Class Action Complaint; D.E. No. 183, End-Payor Plaintiff Second Consolidated Amended Class Action Complaint; D.E. No. 199, Automobile Dealer Second Consolidated Amended Class Action Complaint; No. 14-4469, D.E. No. 1, Truck and Equipment Dealer Class Action Complaint—are hereby dismissed *with* prejudice.

SO ORDERED.

s/ *Esther Salas*
Esther Salas, U.S.D.J.